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Professional Notes.

AT the annual dinner of the South Wales and Monmouthshire District Society of Incorporated Accountants, held on April 19th, Mr. Henry Morgan, F.S.A.A., Vice-President of the Society of Incorporated Accountants and Auditors, delivered a carefully thought out speech in regard to the wave of speculation which has inundated the country and threatened to carry along with it a considerable number of people who have not hitherto dealt in stocks and shares, and who are very indifferently equipped for business of this nature.

Mr. Morgan pointed out that the craze for speculation had extended to practically every section of the community, and there are instances, he said, where men of quite moderate means have in the course of a few days found themselves comparatively well off as a result of a sudden jump in the price of shares which they have been advised to buy. Many of these people do not, in fact, they cannot, discriminate between what is sound and what is not. They act on so-called "tips," which are circulated by people to induce them to buy at a high price shares which they want to sell. A run of good luck causes them to speculate to an extent far in excess of what they are justified in doing. They do not recognise that their profits are largely on paper, and are subject to their being able ultimately to get out. They do not realise that in the case of shares where there is little merit to justify the enormous prices to which they have risen, and in which frequently the less experienced speculator is most heavily involved when there is a break in the market, as must occur sooner or later, their shares may have to be sold at a substantial loss, or they may be practically unrealisable at any price.

"It is," Mr. Morgan said, "when conditions prevail such as those during recent months that not over scrupulous promoters get their opportunities of loading the general public with large numbers of shares, with enormous profits to themselves." They had recently seen issues offered to the public, and largely over-subscribed, where it was obvious to anyone with experience that the disclosed position and past profits could not justify the extravagant figures at which these companies were capitalised, and certainly not the extravagant premiums at which the shares were dealt in on the Stock Exchange. In the case of some shares, where the rise had been most sensational, the actual merits could not justify even a small fraction of the market quotation.

One of the principal causes of this excessive speculation, in Mr. Morgan's opinion, was our present system of taxation, which was bound to have a demoralising and discouraging effect upon business men, and especially those with capital to invest. "Apart from the man (or woman)," he said, "who is always attracted by the prospect of making money without working, and at the same time avoiding income tax, take the case of a man who is moderately well off, who has a fair amount of unearned income, and is contemplating putting his capital into a business where his services will be utilised. If the business is profitable, the Government takes by way of income tax and super tax from 30 per cent. to 50 per cent. of his earnings and share of profits. If, on the other hand, the business results in a loss, the Government bears no part of it. Is it to be wondered at that business men hesitate to risk their

capital in a business venture, but are attracted rather by the prospect of appreciation of an investment, or a profitable speculation, which would be free from taxation and involves but little work or energy?" This attitude, in Mr. Morgan's opinion, is far more widespread than is generally imagined.

In concluding his observations, Mr. Morgan said that it was especially important that directors of companies, professional accountants, and the Press should recognise and pay strict regard to their obligations in matters such as these. We would also add our advice that as far as possible members of the accountancy profession, with their great and recognised obligations, should themselves hold aloof from all forms of speculative activity, and devote their talents to the investigation and audit of accounts, and pay particular attention to the verification of securities and cash balances which might in some few instances be tampered with under the strain of acute temptation induced by the circumstances to which Mr. Morgan has drawn attention.

Sir James Martin, F.S.A.A., has completed his full term of office as President of the London Chamber of Commerce. At the recent annual meeting the following resolution was moved by the new President, Lord Herbert Scott, C.M.G., D.S.O., seconded by Lord Kylsant, G.C.M.G., and carried unanimously: "That the members of the London Chamber of Commerce, in annual meeting assembled, desire to tender to Sir James Martin, on his retirement from office, their hearty thanks for the valuable services he has rendered to the Chamber as its President from 1925 to 1928. They also desire to place on record their high appreciation of his whole-hearted support and furtherance of the Chamber's interests for a period of over 34 years, during which time he has also successively filled the offices of Treasurer (1915 to 1916), Deputy Chairman of the Council (1916 to 1918), and Chairman (1918 to (1921), and has ably represented the views of the commercial community on numerous important Government Inquiries and Committees, the most recent being those on Commercial Arbitration, Bankruptcy, and Company Law Reform. That a copy of this resolution be suitably inscribed and presented to Sir James Martin."

Very many charitable appeals are made to professional men, but there can be little doubt that to Incorporated Accountants the needs of the Young Men's Christian Association will be very apparent. An appeal for funds has been sent to members of the Society, details of which appear elsewhere in this issue. It is hoped that Incorporated Accountants will support it to the best of their abilities. Large gifts are always welcomed, but it is a great number of small donations which will result in a sum worthy of the cause and which will adequately reflect the sympathetic attitude of the whole body of Incorporated Accountants to the work of the Young Men's Christian Association.

We publish in another column extracts from the Budget Speech of the Chancellor of the Exchequer, from which it will be seen that some important changes are proposed to be made in relation to the provision for debt redemption and other matters. The proposal is to establish a fixed debt charge of £355,000,000 a year, so that the saving in interest by the annual repayments of debt will be added to the Sinking Fund which will thus grow in amount year by year until in 50 years the whole debt will be redeemed. This is on the assumption that the rate of interest payable by the Government does not fall below 4½ per cent., and that, in the words of Mr. Churchill, "the day does not dawn when some unholy hand is laid upon the fund." Should the interest rate fall, the Sinking Fund would of course benefit, as the Government would have less interest to pay, and more would be available for debt redemption.

A new feature of the Chancellor's financial statement is that the items are all shown net. Hitherto in some cases, such as the sale of fee stamps, the gross outgoings have been shown on the one side and the receipts on the other, which, according to Mr. Churchill, "has proved a stumbling block to a numerous tribe of political quadrupeds." We reproduce the statement of estimated revenue and expenditure for 1928/29 in the new form. Taking the figures on the same basis for preceding years, Mr. Churchill gives the following comparison of the total expenditure excluding Sinking Fund, Road Fund and Post Office:—1923/24, £691,000,000; 1924/25, £682,000,000; 1925/26, £701,000,000; 1926/27, £698,000,000; 1927/28, £681,000,000; 1928/29 (estimated), £676,500,000.

The Treasury Note issue is to be taken over by the Bank of England, and the reserve which has accumulated to date in respect of possible depreciation on this Note issue, amounting to £13,200,000, is to be added to the Sinking Fund, together with a further £800,000 taken from the general resources of the Budget to make up a round figure of £14,000,000. The result is that there will be a total provision of £78,500,000 in 1928/29 for Sinking Fund and for interest on Savings Certificates which apparently has not been adequately provided for hitherto.

The main items in the Budget that will affect tax payers for the current year are the duty on petrol and other imported oils, and the increase in the allowances for children, which are now raised from £36 to £60 in respect of the first child, and £27 to £50 in respect of the others. The effect will be that a married man with three children will be entirely free from tax on an earned income of £400 per annum, and on an earned income of £500 per annum he will have his tax more than halved. This is a substantial concession to those who are earning moderate incomes, and will no doubt be greatly appreciated.

There have been many cases recently of claims for exemption from income tax on charities which have involved the question of what constitutes a charity. The latest case is that of the *General Medical Council* v. *Commissioners of Inland Revenue*, which was heard by the Court of Appeal. The Council claimed exemption on the ground that it was a body established for charitable purposes only, namely, the benefit of the public at large. This claim was rejected both by the Special Commissioners and by Mr. Justice Rowlatt, and now the Court of Appeal have given judgment to the same effect. The Master of the Rolls said he found it impossible to accept the contention that the objects of the General Medical Council were exclusively for the public benefit. No doubt the public interests were served, but the body was formed for the promotion of objects which were also beneficial to the medical profession. "It cannot be too often or too plainly stated," he said, "that there is no general exemption of a charity from income tax under the Income Tax Acts, but only in respect of certain classes of income, such as tax on the annual value of land or buildings under Schedule A, and tax on dividends and interest of public funds under Schedule C. These exemptions are granted by sect. 37 of the Income Tax Act, 1918."

An interesting point relating to mining leases arose before the Court of Appeal in the case of *Mallett* v. *Staveley Coal and Iron Company, Limited.* The company had taken a lease of certain coal seams, which they covenanted to work and develop, paying a minimum rent and mining royalties. Apparently the project was not a profitable one, and in order to be released of their covenants the company paid to the lessor sums amounting to £6,500, which sums they claimed to treat as a deduction in arriving at their profits for income tax purposes. The General Commissioners held that the payments were allowable charges, but Mr. Justice Rowlatt ruled that they were capital expenditure, his opinion being that all receipts and payments in connection with acquiring or disposing of mining leases were capital transactions for income tax purposes. This view has now been upheld by the Court of Appeal, the ruling of their Lordships being that the principle laid down in *Ushers Wiltshire Brewery* v. *Bruce* is applicable, and accordingly that the payments in question are not payments exclusively expended for the purpose of the company's trade of winning and selling coal, so as to form a proper debit against the incomings of that trade.

The case of *Fairey* v. *Cooper*, to which we referred some months ago, is creating a good deal of interest in the legal profession. It was to the effect that three debtors who had executed a deed of arrangement and covenanted in the deed that they would "aid to the utmost of their power the realisation of the property and the distribution of the proceeds thereof among the creditors," were nevertheless justified in law in soliciting the customers of the business for their own benefit and could not be restrained from doing so by the person to whom the business had been sold. In the first instance, an injunction was granted by Mr. Justice Finlay against two of the debtors and damages awarded, but this decision was reversed by the Court of Appeal.

The general rule regarding the sale of goodwill is that the vendor is under an obligation to refrain from canvassing the old customers on the principle that he is not entitled to depreciate that which he has sold, but it was held in *Walker* v. *Mottram* that this did not apply in the case of bankruptcy as the bankrupt was not acting voluntarily. It was argued that in the case of a deed of arrangement the act of the debtor was voluntary, but the following dictum of Mr. Justice Warrington was quoted by the Court with approval: "The liquidating debtor is a person who is compelled by circumstances to take certain steps in order that his property may be distributed among his creditors in exactly the same way as a bankrupt who presents a petition under the Bankruptcy Act. In one sense what the debtor does is voluntary; in another sense it is not voluntary at all, as he may have taken the steps he did in order to avoid other proceedings being taken by the creditors."

The net result, therefore, seems to be that while the ordinary vendor of goodwill is prevented from soliciting the old customers a bankrupt is not, and apparently a debtor who executes a deed of assignment to a trustee for the benefit of his creditors is to be regarded as a bankrupt and not as a voluntary vendor. The only safeguard, therefore, is to see that strict covenants are taken from the debtor, and nothing left to be assumed or implied.

On the subject of complaints by examination candidates that questions are sometimes set of a character which they did not anticipate, the following extract from the *Journal of Accountancy*, New York, is interesting and to the point :—

> The candidate too often learns to know a fact or a thesis in one suit of clothes, and when the garb is changed he cannot recognise the features of the wearer. This is a quite common product of the acquisition of knowledge from texts. The unthinking pupil sees the outward aspect and no more. The intelligent student, on the other hand, concerns himself more with the why than with the how, and so, when he meets what seems to be a stranger, he looks sharply at the features to see if perhaps it is not an old acquaintance after all. The dress means very little to him who knows the wearer. It may be said with a good deal of reason that the candidate who fails to recognise a known principle in a new guise should not pass. No one will quarrel very violently with that argument, unless it be the man who has failed.

Requisites of a Submission to Arbitration.

THE overwhelming majority of commercial arbitrations are conducted upon the lines laid down in the Arbitration Act, 1889, which provides a succinct and comprehensive code of procedure.

Arbitrations, as a whole, are divisible into three classes—viz: (1) References by consent out of Court, (2) References under Order of Court, and (3) References under Special Acts of Parliament. The Arbitration Act, 1889, deals with each of the above three classes, but it is only the first class which constitute arbitrations in the full and proper sense of the term; for the essence of an arbitration is the settlement by an independent tribunal, other than one of the regular Courts of the realm, of disputes which have arisen between two parties who have voluntarily agreed to such a mode of adjudicating upon and composing their differences. The second class of references arise only after the disputes have already been before the Courts, whilst the third class often lack the element of voluntary agreement between the parties, the references being imposed upon them by the special statute applicable in each particular case; moreover, they are confined to the adjudication of specified differences only, which can arise only within the confines of special sections of the community. An arbitration proper, on the other hand, is open to all of His Majesty's subjects (as well as foreigners who choose to submit to the jurisdiction of English tribunals), and almost any kind of dispute or difference may constitute the subject-matter of the reference.

An arbitration proper, then, arises out of the voluntary agreement of the disputants. At common law such an agreement might be made in any form which the parties chose, whether by deed or by parol, and many arbitrations were entered upon by mere verbal arrangement between the disputants. This wide freedom as to formality was restricted, however, in the case of contracts falling within the provisions of the Statute of Frauds, for if the contract was of a class requiring to be evidenced by a memorandum in writing signed by the party to be charged before an action might be brought upon it (a contract, *e.g.*, for the sale of land), then, if the contract did not satisfy the Statute of Frauds in this respect, a clause contained within it, which provided for arbitration as a means of settling any dispute arising out of it, was just as much unenforceable as the contract itself.

Thus, in the case of *Rainforth* v. *Hamer* (1855), where a dispute had arisen between a landlord and his tenant in respect of the amount of compensation payable consequent upon a notice to quit, the Court held that the dispute related to an interest in land within the Statute of Frauds, and that, therefore, the parol agreement which the parties had made to submit their differences to arbitration was an unenforceable agreement. Similarly, in *Walters* v. *Morgan* (1792), the award of an arbitrator was held to be unenforceable where the difference submitted to him was on a question of the length of lease which ought to be granted, which the Court held came within the Statute of Frauds.

Such was the position at common law. Arbitrations are, even now, frequently entered upon without formality, and are conducted to a conclusion accepted and acted upon by the disputants without question. If, however, the disputants desire to avail themselves of the not inconsiderable advantages afforded by the law to references conducted under the terms of the Arbitration Act, 1889, the requirements as to form laid down in the statute must be complied with. The requirements are, indeed, far from onerous. Sect. 27 of the Act defines a submission with which alone the Act concerns itself as "a written agreement to submit present or future differences to arbitration." An agreement to submit differences to arbitration is similar to any other legal agreement in respect to its formation and the capacity of the parties making it. Hence, since agreement precludes the idea of doubt, the parties must be quite clear as to what it is they are reducing to a binding agreement.

The Arbitration Act, 1889, demands that this clarity, this *consensus ad idem* between the parties, shall be evidenced by some document. The "writing" may be in the hands of the parties, typewritten or printed, and the agreement need not necessarily be contained within the four corners of one document, for it may be contained in a number of documents which clearly refer to one another, and from which as a whole the agreement may be gathered. Curiously enough, it does not yet appear to have been definitely settled whether the signatures of each of the parties is essential. The various questions which have arisen for judicial interpretation upon the perhaps too brief statutory definition of the requisite form of a submission are well brought out in the following important cases.

It is convenient to consider first the last-mentioned question, since the judgments occasioned by the necessity for its solution called forth illuminating general observations from the bench. In *Caerleon Tinplate Company, Limited*, v. *Hughes* (1891), the plaintiffs were negotiating a sale of goods to the defendants, and sent them a sold note, whilst the defendants sent to the plaintiffs a bought note. The defendants' bought note contained this clause: "Any dispute arising on this contract to be settled by arbitration in Liverpool." The plaintiffs' sold note, however, contained no mention of arbitration proceedings. Mr. Justice Wills held that this exchange of notes between seller and buyer did not constitute a contract, even if they thought it did, since the terms were not identical in the two documents, and there was accordingly no *consensus ad idem*, *i.e.*, agreement in the same sense, between the parties; and since this exchange of notes did not suffice to effect a valid contract the provision for arbitration could not be enforced. The learned Judge said: "We must hold that both parties must sign their name to it; otherwise there might be a conflict of evidence, and a discussion as to what was understood by either party." From this it might be inferred that the learned Judge was holding that the signature of both parties was essential to a written agreement to submit differences to arbitration. If such was his view, it received support from Mr. Justice Bray in an unreported case, *Forder* v. *Whittle*, heard in 1907. It seems doubtful, however, whether the learned Judge was deciding more than that, upon the particular facts of the case before him, the evidence of a binding contract was insufficient. Supposing, however, although only one of the parties had signed, the terms were clear and agreed, would the provision for arbitration have been held to be good? No doubt, as a counsel of perfection, both parties should sign, which consideration applies, indeed, to any form of agreement. The question is answered in the affirmative in several leading cases. Thus, in *Baker* v. *Yorkshire Fire and Life Assurance Company* (1892), where the plaintiff contended that arbitration proceedings were not binding upon him since the document containing the arbitration clause did not bear his signature, the Court held that he had entered into a valid contract with the defendants which was beyond doubt, and that, therefore, his signature (as well as that of the other party to the contract) was not absolutely essential. The plaintiff himself, in fact, showed that he regarded the contract as a binding one, since he was suing under it; he had insured with the defendants under a fire policy which provided for reference to arbitration of any differences which might arise as to compensation payable under it. The point was put quite definitely, again, in *Anglo-Newfoundland Development Company* v. *The King* (1920), where Lord Justice Bankes said: "It is not necessary that both parties should have signed the written agreement; if a person has accepted a written agreement and acted upon it he is bound for this purpose, although he may not have set his hand to the document."

An illustration of how the "written agreement" which is required in order to satisfy the Arbitration Act, 1889, may be contained in a printed document, or partly in a printed document and partly in a written document, where the documents refer to one another, is to be found in *Hickman* v. *Kent or Romney Marsh Sheep-Breeders' Association* (1915). In that case, one of the Articles of the defendant company provided that all disputes between the company and any member should be referred to arbitration. The plaintiff sought to show that the arbitration clause was not binding upon him, but the Court held that it was. He had applied for shares in the company, and his application had been granted by the company, and he must be taken to have accepted with his membership the terms upon which the company was constituted and carried on its undertaking. "If the submission is in writing," said Mr. Justice Astbury, "and is binding on both parties as their agreement, or as the equivalent in law to an agreement between them, the statute is satisfied." Other cases which may be referred to where the agreement to submit to arbitration was construed by the Courts from two or more documents are: *Lobitos Oilfields Limited* v. *Admiralty Commissioners; Crown Steamship Company* v. *Same* (1917), where a lengthy correspondence was considered, passages being extracted from a number of letters; and *Clements* v. *County of Devon Insurance Committee* (1918), where the conditions under which a panel doctor was employed were considered with reference to the Committee's rules governing the settlement of differences. *Aitken* v. *Batchelor* (1898)

is a further authority for the proposition that the signature of one only of the parties is sufficient to satisfy the Act, if the elements of a valid contract are shown to exist. It illustrates, moreover, how the agreement to submit to arbitration may be collected from documents other than those which have been drawn up by the parties who are held to be bound by the agreement, in which connection it should be considered in conjunction with *Hickman* v. *Kent or Romney Marsh Sheep-Breeders' Association* and *Baker* v. *Yorkshire Fire and Life Assurance Company* above referred to.

In *Aitken* v. *Batchelor* there was an action before the Court containing both a claim and a counterclaim. The Court gave its judgment upon the claim, whereupon the parties agreed not to proceed there and then with the counterclaim but to refer its subject-matter to arbitration. That agreement Counsel on either side endorsed upon their briefs. Subsequently it was contended that the arbitration proceedings could not be enforced, since there was no written agreement within the provisions of sect. 27 of the Arbitration Act, 1889. The contention was rejected by Mr. Justice Collins, who said: "Here there was an agreement between the parties carefully taken down by Counsel on either side, and signed by them. I think, too, that there may be a complete agreement under the Act although signed by one of the parties only."

All that the Act requires, then, is a written agreement, but the parties may, of course, employ a more solemn or formal document than a mere agreement under hand if they wish. Deeds and bonds are frequently used. The submission must be stamped, otherwise it is invalid, and the stamping requirements vary according to (*a*) the value of the subject-matter of the reference, and (*b*) the nature of the document in which the written agreement is embodied. These requirements are similar to those which apply to agreements in general, and are provided under the Stamp Act, 1891, and not specially applicable to submissions. Accordingly, the following rules are to be observed:—

(1) *Submission under Bond.*—The value of the stamp required varies according to the amount recoverable under the bond.

(2) *Submission under Seal.*—An impressed deed stamp of the value of 10s. is required.

(3) *Submission by Writing under Hand.*—(i) If the subject-matter is not of the value of £5, no stamp is required.

(ii) If the subject-matter is of the value of £5 or more, a 6d. agreement stamp is required; an adhesive stamp may be used, and this should be cancelled by the party who first executes the agreement.

Set-off against Calls for Shares.

On the commencement of a winding-up a shareholder liable for calls cannot claim to set-off against them a debt due to himself by the company, and it does not matter whether the call was made before the commencement of the winding-up or is made afterwards by the liquidator. It seems clear that there can be no such set-off unless a debt presently due by the company is by agreement once and for all appropriated to the payment of calls immediately or afterwards to become due to the company.

Sect. 207 of the Companies Act, 1908, provides that in the winding-up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable, and to the valuation of annuities and future and contingent liabilities as are in force under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up and make such claims against the company as they respectively are entitled to by virtue of the section. By sect. 165 the Court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money, due from him or from the estate of the person whom he represents, to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of the Act. The Court, in making such an order, may, in the case of an unlimited company, allow to the contributory, by way of set-off, any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director or manager whose liability is unlimited, or to his estate, the like allowance. But in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

If a creditor applies for and has shares allotted to him, and the company calls up the whole amount payable on them, the company and the shareholder can agree to set off their mutual debt, and the shares thus be rendered fully paid. But a shareholder in a limited company, who is also a creditor of the company under a contract, is not, in the event of the company being wound up, entitled to set-off the debt due to him against the calls, nor to set-off

against the calls a dividend which may hereafter come to him. But upon payment of all calls which have become due, he is entitled to receive a dividend on the company's debt due to him (other than for dividends due to him as a shareholder on his shares) at the same time and at the same rate as the other ordinary creditors (*Grissell's* case (1866), L.R., 1 Ch., 528). And this is so, even though the shareholder may have contracted with the company, as a term of making a loan to it, that the amount of the loan should be treated as paid in advance of calls in the event of a winding-up (*re Law Car Insurance Corporation* (1912), 1 Ch., 405). The latter case seems to make it clear that there can be no such set-off unless a debt presently due by the company is by agreement once and for all appropriated to the payment of calls, immediately or afterwards to become due to the company. But while the company is a going concern a member may validly make a loan to the company on the footing that the loan is to be set-off against any calls thereafter to be made.

In *Calisher's* case (1868), L.R., 5 Eq., 214) it was held that a contributory of a limited company being wound up by the Court was not entitled, in the absence of special agreement, to set-off money due to him from the company against a call made before the winding-up. In *Alliance Film Corporation* v. *Knoles* (1927), 43 T.L.R., 678) it was held that in a common law action by a company, which is in liquidation, against a shareholder for a call made before the liquidation, the defendant has no right of set-off in respect of sums alleged to be due to him from the company. An unsuccessful attempt was made in this case to distinguish a common law action for debt from a proceeding by the liquidator in a winding-up, the argument being that though in substance the action was a claim by the liquidator in the liquidation, it was, in form, a common law action by the company, and therefore the defendant had the common law rights which were not available in proceedings taken under the Act of 1908.

PROFESSIONAL CONDUCT.

THE attention of the Council of the Society of Incorporated Accountants and Auditors has been called to the fact that a junior member of the Society was offered an appointment by a firm of income tax experts. The member decided that upon professional grounds it was not proper that, as an Incorporated Accountant, he should accept the appointment. The Council are in accord with the attitude taken by the member and have considered the general question which arises.

The Council are of opinion, it is inappropriate that the services of Incorporated Accountants should be at the disposal of unqualified persons who obtain business by means which are not open to members of the Society, and who might be unable to discharge adequately the duties they had undertaken to carry out, without the aid of qualified assistants.

The Council desire it to be known that, in case any such openings should be offered to members of the Society they deprecate the acceptance of appointments of this character or the association of members of the Society with unqualified persons who are not subject to discipline.

BANK BALANCE SHEETS UNDER THE INDIAN COMPANIES ACT, 1913.

Important Indian Decision.

(FROM A CORRESPONDENT IN INDIA.)

A case which for some time excited not inconsiderable interest and comment among professional auditors in India (*Shamdasani* v. *Central Bank of India*) was recently decided by the Courts in Bombay. A practice which was till now universally adopted and approved of by the best professional circles came for the first time to be challenged before a Court of LAW. As the issues involved raise important principles of accounting and auditing, I take it that a brief *résumé* of the whole proceedings in the two Courts, together with important excerpts from the judgments, will not be out of place.

The facts of the case are that one, Mr. Shamdasani, a shareholder of the Central Bank of India, Limited, Bombay, obtained notices against the chairman, the managing director, the secretary, the chief accountant, and an accountant of the bank, under sect. 282 of the Indian Companies Act, 1913, for having in 1925 and 1926 wilfully made, or caused to be made, false statements in the balance-sheets and profit and loss accounts of the bank.

Sect. 282 of the Indian Companies Act, 1913, runs as follows:—"Whoever in any return, report, certificate, balance-sheet, or other document required by or for the provisions of the Act, wilfully makes a statement false in any material particular knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to fine."

It has to be remembered that under the Indian Companies Act, unlike the English Act, the form of balance-sheet is prescribed. Sub-sect. (2) of sect. 132 of the Act says that "the balance-sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit." In the form F in the Third Schedule on the "Property and Assets" side there is an item "Book Debts." The note below it states:—"Distinguishing in case of a bank between those considered good and in respect of which the bank is fully secured, and those considered good for which the bank holds no security other than the debtor's personal security, and distinguishing in all cases between debts considered good and debts considered doubtful or bad. Debts due by directors or other officers of the company or any of them either severally or jointly with any other persons to be separately stated in all cases."

Mr. Shamdasani's case was that (i) in the balance-sheet of June 30th, 1925, under the heading "Particulars required by

the Act VII of 1913" item (5), "Debts considered bad or doubtful" were stated as "Nil." Again (ii) in the balance-sheet as at December 31st, 1925, under the heading "Particulars required by the Act VII of 1913," item (5), "Debts considered doubtful" were stated only Rs. 5 lacs, and "Debts considered bad" as "Nil." These he alleged were false statements. Certain bad debts had been treated in the balance-sheets as "Debts considered good" in order to conceal the true state and condition of the bank. Further, he alleged that in 1925 there were bad debts amounting to Rs. 20 to 22 lacs, and that the respondents had falsely stated that there were no bad debts.

Against this the respondents' defence was that under the heading mentioned by the applicant, the so-called bad and doubtful debts were not included as contended by the applicant. The extent to which the debts were doubtful or bad was not shown in the figures. The bank had instead wiped out the bad debts of Rs. 20 lacs referred to by Mr. Shamdasani by providing the sum out of the bank's secret reserve. This they had done by omitting Rs. 20 lacs bad debts from the "Assets" side of the balance-sheet and correspondingly reducing the secret reserve fund from the "Liabilities" side to an equal amount. Thus they contended they had disclosed only the good debts in the balance-sheet.

The Magistrate, after taking some evidence and hearing arguments of the parties, discharged the notice, observing that he was satisfied that what the balance-sheet showed was the total of net good debts, and to the extent that the debts were bad or doubtful, due and adequate provisions were made by debiting the amount of the estimated deficiency to a secret reserve. The statements made in the balance-sheets were therefore not false. He further remarked that the practice followed by the Central Bank was not without authority or precedent.

Against the discharge of his complaint Mr. Shamdasani appealed to the High Court. Mr. Justice Fawcett and Mr. Justice Patkar, who heard the case, observed: "Primarily the expression 'book debts' means debts owing to the company, and as shown in the books of the company. The primary meaning of the expression, even apart from the subsequent note, would in our opinion be that all debts due to the company shown in the books should be included in the total entry against this item. In saying this we do not of course mean to imply that if a company's books show a debt which the auditors ascertain to be not a real debt, but a fraudulent entry, that such a debt should be included in this item. . . . But apart from any exception of that kind, it seems to us that the intention of the Legislature clearly is that all debts which are entered in the current books of the company should be included under this head. . . . A debt is none the less a debt though there may be little prospect of its recovery, and though the creditor may have means of covering the deficit if it is not paid, it is always open to the company to write off debts that in its opinion are entirely irrecoverable (*e.g.*, if they have become entirely time-barred), and on that being done such debts should cease to be book debts. If there could be any possible doubt on this point, it is clearly swept away by the terms of the note about distinguishing between good, doubtful, and bad debts; we can see no reasonable construction of this provision than a meaning that all genuine debts must be covered by the entry against this item, whether they are considered good, doubtful, or bad debts. If you have a heading X, which is wide enough to cover (*a*), (*b*), and (*c*), and you are told to distinguish in the entry under X between (*a*), (*b*), and (*c*), there is no reasonable or logical escape from the conclusion that you have to include (*b*) and (*c*) in the X entry. . . . No doubt in the case of a bad debt it may be said that it is of no value as an asset. But the opinion of the company that it is a bad debt may eventually turn out to be wrong, and the contention that a company need not show any debt that it considers bad because it is doubtful asset is opposed to the direct enactment in the note. Furthermore, though some book debts may be considered doubtful or bad, they can still be of service to the company. They can be mortgaged or charged (Cf. sect. 109 (*d*) of the Act, 1913), and it is not uncommon for the company to create a 'floating charge' on its book debts. (Cf. sect. 233 of the Act, 1913, and *Illingworth* v. *Houldsworth* (1904), App. Cases 355). The note required that all debts due by directors or other officers of the company shall be separately stated under this item. Is it to be said that because some of those debts might be considered bad they can be excluded? Obviously they cannot, in view of the express direction in the note; so this also goes against the contention that the bad debts can be omitted. Another important consideration is the fact that the 'capital and liabilities' side of the form contains an item 'provision for bad and doubtful debts.' This is another clear indication that the legislature intended that bad and doubtful debts should be shown on the 'assets' side, and it ensures that a company, if it has made provision against such debts, should in this manner be able to correct a bad impression that might otherwise arise from the entry of bad and doubtful debts on the 'assets' side. Incidentally we think that the contention about a secret reserve fund is at any rate subject to this qualification, that in India, if (as in this case) any part of such secret reserve is availed of to meet bad and doubtful book debts it must be revealed in the balance-sheet, and not concealed in the manner adopted in this case. . . . The clear provision of the form cannot be allowed to be whittled down by general consideration as to the object of the balance-sheet. . . . The object of an enactment may be met by doing a thing in many ways. But if that enactment lays down a particular way in which that thing is to be done, it is no defence to say that although you have done it in a different way it fulfils the object of the enactment. The contention that a company need not show any bad or doubtful debts so long as that can be covered by a secret reserve fund entirely nullifies the enactment of the Legislature that such book debts should be included on the 'assets' side, and any provision made for meeting them should be shown on the 'liabilities' side. . . . It was contended that such deviation from the provisions in the note in the form might be justified by sub-sect. (2) of sect. 132, which says 'that the balance-sheet shall be in the Form marked F or as near thereto as circumstances admit.' Obviously, the elasticity is intended for cases where the circumstances of a particular company make any part of the form inapplicable to it. . . . If our conclusions operate so as to cause undue inconvenience to banks, it is open to them to move the Governor-General in Council to amend the form under the power conferred upon them by sect. 151 of the Indian Companies Act, 1913. But so long as the form stands effect must be given to plain meaning of the language used in it. Therefore, in our opinion, the view taken by the Magistrate was erroneous, and he was not justified in dismissing the complaint as he did. There are clear *prima facie* grounds for holding that the book debts shown in the two balance-sheets of 1925 and 1926 now in question are incorrect, and that the express or implied statements are untrue. It will remain for the Magistrate to decide whether these false statements were made wilfully and knowingly by all or any of the respondents. That is the question which is entirely untouched by the judgment. We set aside his order dismissing the complaint and remand the case to him for disposal accordingly."

As a result of the above decision of the High Court, the case came before Mr. H. P. Dastur, Presidency Magistrate, for retrial and decision on the issue whether, in view of the opinion of the High Court that the statements made in the balance-sheets were false, they were made wilfully or knowingly by all or any of the respondents. In the course of his judgment the Magistrate observed, as reported in the *Times of India* of February 29th, 1928, that it was admitted that on December 31st, 1925, there were bad debts to the extent of Rs. 23 lacs and odd for which provision had been made out of the secret reserve. The questions that remained to be answered were whether the nondisclosure of the bad debts of Rs. 23 lacs amounted to a false statement, whether it was wilfully made, if so whether statements were made knowingly to be false, and whether it was knowingly made by all or any of the accused. The High Court had held that the total book debts shown in the balance-sheets were incorrect and that the express or implied statements that there were no bad debts were untrue. He was bound by that decision. It has been admitted by the counsel for the respondents that, in view of the decision of the High Court, it was not disputed that the statements about bad debts were false. He also conceded that they were wilfully made. The only point that the counsel disputed was whether the statements were made with the knowledge of their falsity. The Magistrate held that the bank management was aware of the existence of bad debts and the omission to include them on the "assets" side was intentionally made because a like provision was made out of reserve fund, and that, too, was not shown on the "liabilities" side. It was done on purpose, and in doing so the bank had followed a practice prevailing in India and England. The only question that remained was whether these statements were made knowingly by all or any of the accused. The object of the balance-sheet was not concealment but information within certain limits, and the form specifically laid down under what heads and how the debts were to be dealt with. The bank was aware of the form; the bank was aware of the details required by the form; the bank was aware that it had debts, and though the Legislature required it to mention specifically the three kinds of debts, it deliberately chose not to do so. It not only omitted to mention bad debts, but a wilfully wrong statement was made that the bad debts were "nil" or that they were only Rs. 5 lacs. It might not have been done dishonestly or fraudulently, but dishonesty and fraud were not ingredients of an offence under sect. 282 of the Indian Companies Act, 1913.

As regards the question whether false statements were made by all or any of the accused, His Worship observed that the two signatories of the balance-sheet were directors, and had nothing to do with the bank management as such or with the preparation of the books of accounts or the advance sheets. The mere fact that they had signed the balance-sheet did not imply that they were aware or must have been aware that the statements about the bad debts were false. Directors were entitled to rely upon the judgment and advice of the manager, whose integrity, skill, and competence they had no reason to suspect. His Worship, therefore, acquitted the second and the third accused. As to others, they were members directly concerned with the bank management and preparation of the accounts and other documents. They did not allege they were not aware of the existence of bad debts. His Worship held that they were guilty of the offences, and convicted them. As there was nothing before the Court to show that any of the accused acted dishonestly, merely a nominal sentence was called for in each case. The Bank management and auditors seemed to have followed a practice prevailing with some banks in India and in England. That view seems to have been accepted even by the Government of India, as appeared from their communique accompanying the notification dated March 29th, 1927. The subsequent amendment of the form could not, however, operate as a bar to any proceedings instituted before the amendment came into effect, and with regard to a balance-sheet prepared before that date, His Worship therefore sentenced each of the accused to one day's simple imprisonment, and pay a fine of annas eight on each charge, the sentences of imprisonment to run concurrently.

Subsequent to the decision of the High Court above referred to, the Central Bank applied to the Governor-General in Council to amend the form of balance-sheet under powers conferred on him under sect. 151 of the Indian Companies Act, 1913. Sect. 151 of the Act reads: (1) The forms in the Third Schedule or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer. (2) The Governor-General in Council may alter any of the tables and forms in the First Schedule so that he does not increase the amount of fee payable to the Registrar in the said Schedule mentioned and may alter or add to the forms in the Third Schedule. (3) Any such table or form where altered shall be published in the *Gazette of India*, and on such publication shall have effect as if enacted in this Act, but no alteration made by the Governor-General in Council in table in the First Schedule shall affect any company registered before the alteration, or repeal as respects that company any portion of that table. (4) In addition to the powers conferred by this section, the Governor-General in Council may make rules providing for all or any matters which by this Act are to be prescribed by his authority. (5) Every such rule shall be published in the *Gazette of India*, and on such publication shall have effect as if enacted in this Act.

Upon the application of the Bank the Governor-General in Council issued a communique accompanying the notification dated March 29th, 1927, which runs:—"No. 60-T (28). In pursuance of sub-sects. (2) and (3) of sect. 151 of the Indian Companies Act, 1913 (VII of 1913), the Governor-General in Council is pleased to direct that the following alterations shall be made in Form F in the Third Schedule of that Act, viz:—

> "(1) In the column headed 'Capital and Liabilities' to the sub-head 'Provision for Bad and Doubtful Debts,' the words and brackets '(in the case of companies other than banks)' shall be added.
>
> "(2) In the column headed 'Property and Assets' in the sub-head 'Book Debts.'
>
> "(*a*) After the words 'book debts' the words and brackets '(other than bad and doubtful debts of a bank for which provision has been made to the satisfaction of the auditors)' shall be added; and
>
> "(*b*) for the words 'in all cases' where they first occur, the words 'in all other cases' shall be substituted."

The above legal decision and the subsequent notification of the Government amending the form, established that under the Indian Companies Act, 1913, bad debts, except in case of banks, when provided for from secret reserves, cannot, unless such bad debts are actually written off the books, be omitted from the assets side of the balance-sheet and the secret reserve be reduced to an equal amount on the liabilities side. Further, by reason of the fact that the prescribed form provides on the liabilities side a specific heading "Provision for Bad and Doubtful Debts," any such provision as has been made out of the companies' secret reserves must also be revealed by a transfer to the credit of the above account. So far as the banks are concerned, however, the Government notification referred to above sanctions the prevailing practice of omitting bad debts on one side and correspondingly reducing secret reserves amount on the other side.

Society of Incorporated Accountants and Auditors.

COUNCIL MEETING.

A meeting of the Council was held in the Council Chamber, 50, Gresham Street, London, E.C., on Thursday, March 29th, 1928, when there were present:—Mr. Thomas Keens (President), in the chair; Mr. Henry Morgan (Vice-President); Mr. H. J. Burgess (London), Mr. D. E. Campbell (Wolverhampton), Mr. W. Claridge, M.A., J.P. (Bradford), Mr. E. Cassleton Elliott (London), Mr. Walter Holman (London), Mr. Ernest T. Kerr (Birmingham), Mr. Richard Leyshon (Cardiff), Sir James Martin, J.P. (London), Mr. C. Hewetson Nelson, J.P. (Liverpool), Mr. James Paterson (Greenock), Mr. W. H. Payne (London), Mr. W. Paynter (London), Mr. Arthur E. Piggott (Manchester), Mr. G. S. Pitt (London), Mr. J. Stewart Seggie (Edinburgh), Mr. Alan Standing (Liverpool), Mr. Percy Toothill (Sheffield), Mr. Frederic Walmsley, J.P. (Manchester), Mr. R. T. Warwick (West Hartlepool and London), Mr. E. W. C. Whittaker, J.P. (Southampton), Mr. A. E. Woodington (London), Mr. A. A. Garrett, B.A., B.Sc., F.C.I.S. (Secretary), and Mr. J. R. W. Alexander, M.A., LL.B. (Parliamentary Secretary).

Apologies for non-attendance were received from Mr. W. Bateson (Blackpool), Mr. Arthur Collins (London), Mr. Richard Smith (Newcastle-on-Tyne), Mr. W. McIntosh Whyte (London), and Sir Charles H. Wilson, M.P., LL.D. (Leeds).

The Secretary reported the death of the following members:—Mr. William Edmund Atkinson (Associate), Cape Town, South Africa; Mr. Thomas Cobb (Associate), London; Mr. John Gregory (Fellow), Sheffield; Mr. Howard Bartlett Morris (Fellow), Portsmouth; Mr. John Pye (Associate), Liverpool; Mr. Arthur Choate Raymer (Fellow), Bulawayo, South Africa; Mr. James Adam Ross (Fellow), Aberdeen; Mr. Lawrence Scobie (Fellow), Glasgow; Mr. William Edward Tompkins (Associate), Walsall; Mr. George Edmund Wright (Fellow), Sheffield.

AWARD OF GOLD AND SILVER MEDALS FOR 1927.

The Council awarded medals as follows:—

Gold Medal.—Mr. Ivor John Cope, Clerk to F. W. T. Mills, Incorporated Accountant, Doncaster—November examination, 1927: First Place.

Silver Medal.—Mr. Eric Maxwell, Town Chamberlain's Office, Kirkcaldy—May examination, 1927: First Place.

GLOUCESTER CORPORATION BILL.

A report was received that a Select Committee of the House of Lords, after hearing evidence by the Central Association of Accountants, Limited, against the Gloucester Corporation Bill, refused to make any alteration in the Clause providing for the appointment of Chartered and Incorporated Accountants as professional auditors, in support of which the Institute and Society had lodged a joint Petition.

COMPANIES BILL, 1928.

A report was received as to progress made with this Bill in Committee of the House of Commons.

SOUTH AFRICAN BRANCHES.

Reports and advices were received from the respective Committees in South Africa.

Society of Incorporated Accountants and Auditors.

MEMBERSHIP.

The following additions to and promotions in the Membership of the Society have been completed since our last issue:—

ASSOCIATES TO FELLOWS.

ABBOTT, SAMUEL BOYD IRVINE (S. B. I. Abbott & Co.), Bedford Buildings, Bedford Street, Belfast, Practising Accountant.

BAILLIEU, ARTHUR SYDNEY, Collins House, 360/366, Collins Street, Melbourne, Australia, Practising Accountant.

BOUNDY, GERALD OSCAR, De Montford Chambers, Taunton, Practising Accountant.

DE LA HAYE, WILLIAM PHILIP (Temple, de la Haye & Co.), 4, 5 & 6, King Street, London, E.C.2, Practising Accountant.

KING, HARRY CHARLES, 14, Station Parade, Eastbourne, Practising Accountant.

O'CALLAGHAN, JAMES GERARD, B.Com., 12, Suffolk Street, Dublin, Practising Accountant.

PONTEFRACT, JAMES HENRY, 3, York Street, Manchester, Practising Accountant.

STARKIE, ROBERT EDWARD (Starkie & Naylor), 6, South Parade, Leeds, Practising Accountant.

WHITE, JOHN PHILIP, Chief Accountant, United Baltic Corporation, Limited, 158, Fenchurch Street, London, E.C.3.

FELLOW.

ROBERTSON, CHARLES VICTOR (Hemingway & Robertson), Bank House, Bank Place, Melbourne, Australia, Practising Accountant.

ASSOCIATES.

ANDREWS, CLIFFORD JAMES BERTIE, 71A, Seamoor Road, Westbourne, Bournemouth, Practising Accountant.

ASHTON, LEONARD DOUGLAS, Clerk to A. B. Watts, 15, Windsor Place, Cardiff.

BENDLE, CHARLES, Clerk to White & Pawley, 6, Sussex Terrace, Princess Square, Plymouth.

CREW, FRANCIS LESLIE, 1, Cambridge Road, Hastings, Practising Accountant.

DOULL, ALEXANDER CAMPBELL, C.A., Royal (Dick) Veterinary College, 5, Luton Place, Edinburgh.

GREENWOOD, ERNEST, City Treasurer's Department, Town Hall, Bradford.

GUPTA, BISHADENDU, B.Sc. (B. Gupta & Co.), Svamasan, Patna, India, Practising Accountant.

HASLAM, PERCY BOWKER, Borough Treasurer's Department, Town Hall, Bolton.

KELLIE, HENRY ALAN, A.C.A. (Davis, Kellie & Co.), 119, Moorgate, London, E.C.2, Practising Accountant.

LEVIE, GEORGE ELDER, C.A. (*Aberdeen*) (G. Elder Levie & Co.), 289, Finsbury Pavement House, London, E.C.2, Practising Accountant.

LITTLE, ROBERT LESLIE, Clerk to John Potter & Oldman, 22, Birley Street, Blackpool.

MELLANBY, JOSEPH, Clerk to Thomas J. Groves, 14, Scarbro' Street, West Hartlepool.

PASCHO, PERCIVAL DORTON, Clerk to S. H. Roberts, 7, Buckland Terrace, Plymouth.

VAN DAM, LEONARD, Clerk to Alfred Thorp & Co., 7/8, Great Winchester Street, London, E.C.2.

WILLIAMSON, JOHN MOSS, A.C.A. (Moss & Williamson), Market Place, Ashton-under-Lyne, Practising Accountant.

THE BUDGET.

Special Report.

The following extracts from the speech of the Chancellor of the Exchequer in the House of Commons on April 24th are published for the special information of the profession on matters of National and Local Taxation:—

Debt Reduction and Fixed Annual Charge.

We have done very well this year in reduction of debt. The new Sinking Fund was raised to the unprecedented figure of £65,000,000. In addition the Budget has borne the payment of more than £15,000,000 for accrued interest upon Savings Certificates. This total of £80,000,000 is strictly comparable with the £52,000,000 provided under both heads by my predecessor in office in the Budget of 1924. The result, however, of the exertions needed to provide the additional sum of £28,000,000 appears somewhat disappointing.

Mr. Churchill said that the nominal dead weight debt which on April 1st was £7,527,000,000, showed a diminution of only £27,000,000 on the year in spite of the operation of £65,000,000 Sinking Fund, due to a great quantity of 3½ per cent. War Loan having to be raised at the beginning of the year to the higher interest rates now ruling. This had raised interest charges by upwards of £1,000,000. The external debt had been reduced by £6,250,000, and now stood at £1,095,000,000. Floating debt had been reduced by nearly £27,000,000, and was now £688,750,000. This time last year they were faced with some £555,000,000 of National War Bonds maturing before March 31st, 1929. These had been reduced to £193,000,000 towards which there was £60,000,000 in hand from the issue of the 5 per cent. Treasury Bonds last December.

I am glad to say, said Mr. Churchill, that the worst is now over, and that our position for dealing with future conversions has been greatly improved. The time had come when the problem of Savings Certificates must receive new and radical treatment. It was calculated that the interest liabilities involved by their annual sale would have been fairly equated by a provision beginning in early years of a cumulative interest payment of £20,000,000. The difference between this sum and that actually provided had always constituted a direct diminution of the Sinking Fund. "I cannot pretend that this story constitutes the strongest feature of our post-war finance. But I took it as I found it, and if I erred I erred with the Snowdens and the Hornes and with the hereditary virtues of the whole house of Chamberlain." (Laughter.)

Mr. Churchill said they had been making larger Sinking Fund repayments of debt than had generally been realised, consisting of the repayment by the Dominions of loans made to them during the war, and the interest on the Victory Bonds held by the National Debt Office, amounting together to £6,400,000. He went on: On the subject of the treatment of the National Debt I have noticed a good deal of anxiety and loose speaking. I have heard it said that we are making no headway in paying off our National Debt, and it has been suggested that there should be drastic taxation like the surtax or a capital levy. Of course, these supposed remedies are equally futile. We have only got to go on paying the same sort of sums as we are paying now steadily and punctually, and the Debt will be extinguished within the lifetime of some of those who are now listening.

I propose to recur to the policy instituted in Mr. Disraeli's Government by Sir Stafford Northcote in 1875, with the full support of Mr. Gladstone, and to establish a fixed debt charge for the interest for all the services of debt and for the Sinking Fund, so that as the interest charge falls through the working of the Sinking Fund the process of amortising the debt will grow ever greater and more rapid. I propose to establish a new fixed debt charge, and I propose to put the figure at £355,000,000 a year, compared with Sir Stafford Northcote's sum of £28,000,000. This sum provides for the £51,000,000 required to meet the specific Sinking Fund on certain Government stock and it will also provide an average of £20,000,000 a year for the service of the Savings Certificates. The interest saved by the annual repayment of debt and in economies effected in administration will each year be automatically added to the effective Sinking Fund. I propose that the income tax payer shall look forward to any relief which may be yielded by any great conversion of debt to a lower rate of interest. I have that hope for the future. The rest of this annual sum will continue to roll up until or unless the day dawns when some unholy hand is laid upon it. (Laughter.) The payment of £355,000,000 a year, if steadily maintained, even if the rate of interest falls not lower than 4½ per cent., will extinguish our entire debt, internal and external, and including our debt to the United States—without any addition to present taxation in a period of exactly 50 years. (Hear, hear.)

Referring to the restoration of the gold standard the Chancellor said: The time has now come to take a subsidiary step. The amalgamation of the currency notes with the Bank of England note issue will take place in the present financial year. A Bill for this purpose will be introduced at the earliest convenient opportunity. The Bank of England will take charge of the present note issue and of the assets held against them. The profits of the issue less expenses will remain secured to the State. The assets will be taken by the Bank at their present value, and we shall not, of course, hand over the reserves accumulated by the Treasury against the possibility of future depreciations. The amount of these reserves is £13,200,000. I shall use them as a special means of strengthening the Sinking Fund this year and of inaugurating the new debt redemption scheme, to which I shall add £800,000 from the general resources of the Budget, which, with the £51,000,000, will carry the Sinking Fund again this year to the record figure of £65,000,000. Hear, hear.)

Giving a six year forecast of the operation of the fixed debt charge of £355,000,000, Mr. Churchill said the provision for the new Sinking Fund and for Savings Certificates combined would be £78,500,000 in 1928, £66,500,000 in 1929, £69,000,000 in 1930, £72,000,000 in 1931, £73,500,000 in 1932 and £71,000,000 in 1933.

A Government actuary had certified that the full annual provision on the average of the next six years required to meet the interest accruing on the Savings Certificates was £20,250,000. Thus a fixed debt charge provision of £355,000,000, fortified this year by the addition of £14,000,000, would during the next six years, not only meet the statutory and fiduciary requirements of the new Sinking Fund, but would cover the whole provision actuarially required for the Savings Certificates with a free margin of £1,250,000 a year.

Revenue Estimates.

Turning to Inland Revenue, Mr. Churchill said he estimated that the yield from death duties in 1928 would be £72,000,000. The Excess Profits Duty which yielded in 1926 £2,500,000 more than he expected fell away last year to less than nothing. There had been paid into the Exchequer sums aggregating nearly £80,000,000 against which there were indefinite counter-claims. In all the circumstances he had included only £1,000,000 for Excess Profits Duty, and he could not estimate for more than £1,500,000 for the expiring remnants

of the Corporation Profits Tax. Stamps, which yielded £1,000,000 above the estimate last year, might in the present speculative activity be expected to produce an additional £1,000,000, and he put them at £28,000,000. Regarding income tax, Mr. Churchill recalled the £21,000,000 he had to write down last year on account of the general strike and coal stoppage, and a loss of £7,000,000 from the same cause in the present year. I looked forward, he said, to the improved trade conditions in 1927 to make up this handicap, but the recovery of the income tax has not by any means come up to my expectations, still less to my hopes, I have to face in the present year a sum repaid to taxpayers on account of losses in the coal stoppage year.

The Inland Revenue estimate of the profits in 1927, which are, of course, the basis of the tax in 1928, although better than 1926, the coal stoppage year, actually fell short of the profits in 1925, instead of showing the improvement I looked for. The significance of this result will be apparent to all.

It is clear that the injury done by the industrial civil war to the means of earning the national livelihood and the consequent injury to the national revenue which resulted therefrom, is very deep and lasting. Moreover, in 1928 I can no longer count on that acceleration of Schedule A payments which saved us from additional taxation last year. That measure was estimated to produce for one year only an extra sum of £14,800,000. It succeeded beyond all expectations. Nearly £17,000,000 has, in fact, been gathered. The collection has proceeded with more rapidity than in any previous year when only half of the whole tax was paid in January, and scarcely a single complaint has reached the Treasury, although we were dealing with the affairs of 11,000,000 hereditaments. There is, of course, no anticipation of this year's revenue as people continually imagine because of the Schedule A decision taken last year. That trouble will not, as I explained, arise until the world's end. Nevertheless, we now revert to the normal having expended in our distress a valuable and important reserve. In all the circumstances I cannot put the yield of income tax in 1928 beyond the figure of £235,000,000. Super tax fell somewhat short of the estimate in 1927, and I cannot count on more than £60,000,000 on this occasion. The foregoing, with the land tax and various minor items, give a total Inland Revenue figure of £398,350,000. The receipts from the motor vehicles duties I estimate at £26,500,000. The total receipts from taxes will, therefore, be £677,535,000; the gross receipts from the Post Office I estimate at £65,500,000. The revenue from Crown Lands may be put at the usual figure £1,100,000.

In sundry loans and miscellaneous revenue we have to note the increased receipts resulting from the settlement of allied debts and the payment of reparations under the Dawes scheme. It is very interesting that these important factors now aggregate in the present year something like £32,000,000 which is not far short of the £33,164,000 to be paid by us in the coming year to the United States of America. I put sundry loans at £27,657,000, and miscellaneous ordinary receipts at £13,550,000. That is a large drop because the Road Fund surpluses do not figure this year. Special receipts I put at £27,162,000, On the old form of accounts we should thus have £812,497,000 gross revenue and £806,195,000 gross expenditure. Adopting the new type of accounting which omits the Post Office and Road Fund from the account, I have to meet an expenditure, including the Sinking Fund, of £727,381,000, and I have available revenue £733,683,000. Therefore the natural prospective surplus is £6,302,000 without taking into account at all the extraordinary item of £13,200,000 from the currency note reserve which will be used as a further cancellation of debt.

From this prospective surplus I must, in order to simplify the statement, deduct the additional £800,000 I have made to the new Sinking Fund in order to raise it to the total figure of £65,000,000, and the provisional prospective surplus on the basis of a £65,000,000 Sinking Fund thus becomes £5,502,000. Considering that we have lost this year no less than £34,000,000 of windfall revenue which we enjoyed last year, and that we are able with the help of the currency note reserve windfall to provide a new Sinking Fund of £65,000,000, that no additional taxation of any kind is needed to pay our debts or to pay our way, and considering that after this year we shall fairly turn the corner of recovery from the strike stoppage period—considering all these things, and they are fairly large things, I think the Committee will probably be inclined, not indeed to express enthusiasm or satisfaction—that I should not look for—but at any rate to feel in their hearts, however much they may repress the expression of such sentiments, that anyhow things might easily have been worse. (Laughter and cheers.)

Relief of Rates.

Mr. Churchill then went on to what he described as "by far the most important and controversial part of our task." The heavy basic industries which had the greatest responsibilities in the employment of the people and which used to be the glory of Britain, were at present in serious eclipse. These industries were most markedly charged with our elaborate social services, and were principally affected by the high cost of our sheltered transport trades.

The removal of invidious burdens constitutes no favour, Mr. Churchill said. If the burdens are found to be invidious, the removal is an act only of policy and justice. Our system of local rating, dating from the sixteenth century, is wholly inapplicable to modern industrial production. The practice of levying local taxes on the tools and plants of production is, in its nature and essence, economically unsound and even vicious. The rates fall with progressive severity upon industry in proportion as it uses bulky tools and extensive premises and consequently in rough proportion to the number of wage-earners for whom it provides a livelihood. They fall heaviest upon industry when it is most depressed and making little or no profit or even running at loss, and when only a small portion of the plant upon the whole of which it has paid the rates is in fact in profitable use.

According to the latest ascertainments every one of our colliery districts shows a net loss on working, and yet the industry is being required to pay several millions a year in rates. Many hundreds of thousands of wage-earners—certainly much more than a million—after making painful sacrifices of hours and wages, are at this moment working for businesses which are very near the verge of closing down and which in this precarious state are forced to pay heavy rates out of their dwindling capital. How long is that likely to be able to go on?

Mr. Churchill illustrated another effect of "these evils," namely, the raising of rates to meet the extra cost of unemployment relief in distressed areas. These higher rates aggravate the troubles of the failing industries and more unemployment results, and what with the ever growing burden of the rates and the atmosphere of discontent caused by distress—always the cause of discontent—industry flies from these districts or else dies, withers within them.

The whole impulse is for industry to quit these melancholy areas and leave behind them political agitation, State assistance and a forlorn mass of derelict humanity. Yet, after all, many of these necessitous areas, but for the rates, the pauperism, and the political consequences of distress,

would be quite good places for old established businesses to thrive in and even for new ones to be founded in. The burden of rates on industry is cumulative. Coal, rated, is converted into coke, rated again, and used with iron ore, rated, and limestone, rated, to make pig iron, rated again, and this with more coal, rated, and other rated products is used to make steel, rated again. Upon this darkening scene another set of evils arises. All these commodities that I have mentioned need to be transported, usually by rail or water, and at each stage more rate burden is added. The railways pay over £7,000,000 in rates. They are sheltered from foreign competition, but inside this island the railways are confronted with strong competition from motor vehicles. This limits their power to pass on the burden so far as the passenger and light goods traffic is concerned, but the heavy traffic of the basic industries, which have no alternative means of transport, remains inevitably at their disposal. I am not blaming the railways; I am stating a fact. Thus, at every stage in the progress of basic products till they finally reach the ship for export or reach the home consumer, the rates add to the price, and they add to the price irregularly, unequally and injuriously.

I am not, of course, suggesting that the present difficulties of British industry, or the distress of the wage earning population in certain areas, will be cured completely by any relief that can be afforded upon the rates. On the contrary, the opportunity of any rate relief which may be given ought to be used by every depressed industry to set its house in order and to make a new effort at a favourable moment. Coal, cotton, iron, steel—in every one of these industries very great efforts, quite apart from any outside assistance which the State may give, are needed at the present time. Capital and labour should take occasion by the hand and endeavour to turn a substantial, but still, if not utilised, only a fleeting, aid to permanent effect. We boast no panacea, but we are sure that the relief of the rates upon production is the first, the most obvious, and the most urgent remedy which Parliament can apply.

Productive industry employs three-quarters of the weekly wage earners, and accounts for not far short of nine-tenths of the 1,000,000 unemployed. The distributing trades, according to every test which the Inland Revenue can apply, have not suffered, but, on the whole, they have prospered in the last ten years, and the revenue raised upon their profits has increased, and is still, I am glad to say, increasing.

Accordingly, taking this view, and having profited by what I have heard in the debates in this House during this Parliament, and having laid to heart every counsel that was offered in sincerity—accordingly at Whitsuntide last year I proposed to the Prime Minister that, as the concluding financial effort of this Parliament, I should try to form a mass of manœuvre of £20,000,000 to £30,000,000 a year for a great operation upon the rates, and, secondly, that this effort should not be frittered away over the whole front, but its relief should be concentrated upon the sector occupied by the producers in town and in country. Ever since then all the Departments of State have been at work. Our plans are now complete, and we believe them to be practical. The time for consideration has passed; the time for action has come.

The policy will proceed in three main stages. First, the gathering of the money necessary for the relief of the rates upon the producers. Secondly, defining the scope and the direction in which that relief should be applied, and thirdly, the reimbursement of the local authorities for their loss in rateable value. These are the three stages, and with each of these I will now proceed to deal.

The first stage is the provision of the money, and that is what we are going to do now. The second stage, the direction of the relief, will require a Bill, which will be called the Valuation Ascertainment Bill. This will be introduced by the Minister of Health as soon as possible after the Budget resolutions are disposed of. Twelve months will be required after that Bill is passed to enable the new valuation to be made for the purposes of derating. While this is going on, and when we meet after November, the third stage of the policy will begin.

The Minister of Health will then produce the main Local Government Bill dealing with the reimbursement of the local authorities. Advantage will be taken of this unique opportunity to carry out those reforms in local government which are long overdue, and upon the principle of which the Government have already reached definite conclusions. The interval will be occupied in consultation with the local authorities with a view to securing their active co-operation and dealing fairly with them, having regard to all the circumstances of the present time, social, financial and economic, and to other circumstances as well.

This main Local Government Bill of the winter must inevitably become the most important measure of its kind since 1888, or perhaps since 1834, though I trust it will be more sympathetically conceived. The opportunity afforded by the relief of productive property from rates will be used to establish a system of block grants, subject to quinquennial revision. The block grants will include not only compensation to the local authorities for their loss of rates, but will also include the existing percentage grants for health services. They will also include grants under the Agricultural Rates Act, and the other money provided by the assigned revenue system, except only such parts as are allocated to education and police. These remain untouched outside the ambit of the scheme at the present time, and so far as the present Parliament is concerned.

As to roads, the grant from the Road Fund for road improvement in all areas and for the maintenance of Class 1 and Class 2 roads in administrative counties all continue unchanged. On the other hand, all State assistance towards the maintenance of roads in London and in County Boroughs, and of non-classified roads in administrative counties, will in future be given through the channel and in the form of the new block grant. For this purpose a suitable share of the existing grant and of the growing revenue of the road fund will be assigned.

Lastly, in order to inaugurate the new system and to mitigate the hard cases and anomalies inseparable from a great change of this character, there will be an additional grant of new money from the Exchequer over and above what the local authorities are receiving now, and for this purpose I am prepared to find £3,000,000 a year, though I trust it will not all be required. This potent fund of money comprised in the block grant will be used not only for re-imbursing local authorities, but also for the purpose of securing a gradual but continuous adjustment of the resources of individual local authorities to the needs and the character of the population for whom they are responsible. The creation of wider areas for certain purposes of local Government has long been urgent.

Both poor law and the highways require a broader basis of adjustment, and here an interesting and helpful feature presents itself. Either of these questions treated separately involves disturbance, and considerable disturbance of the resources and the burdens of particular areas. Widening the area of the poor law helps, on the whole, the towns at the expense of the countryside. Enlarging the boundaries of

highway administration helps the countryside at the expense of the towns. Either of these problems taken separately probably presents insuperable difficulties, but taken together, linked in one comprehensive scheme, these discrepancies are to a considerable extent, indeed to a remarkable extent, cancelled out and neutralised, and with the additional subvention from the Exchequer which the institution of wider areas of charge renders possible, there is no reason why the double reform should not be achieved not only without any marked increase in the rates in any area, but with a substantial relief in many highly rated areas, and with a large balance of reduction generally from one end of Great Britain to the other. It will be seen that in what I have just said I have been giving two very important indications of the Local Government Bill of the winter.

There are the two indications, larger areas and lower rates. These are the two main features which will characterise the Bill to be presented in the autumn. The policy which we intend to follow is directly opposed to that advocated from several quarters of transferring to the central Government whole blocks of services now discharged locally, like the care of the able-bodied poor. Such a remedy would be improvident and reactionary. It would sap the vitality of our local government system and impair local responsibility.

We hope that the main Local Government Bill will receive the Royal Assent by Christmas, or at any rate by Easter. On this basis, and provided that the new valuations under the Valuation Ascertainment Bill are completed about the same date, the first relief to rates on productive industry will begin in the rate payment, October, 1929. Finally, the fulfilment of the scheme of local government reform will be achieved during the course of 1930. There is a long job before us. Unless Parliament is strong enough, patient enough, dignified enough, to pursue over a long period of time national objects of prime importance, it would be far better to admit that the capacity for design and concerted action no longer resides among us.

Method of dealing with Rating Relief.

Coming to "the fertile and agreeable regions" of special rating relief for the producer, manufacturer and agriculturist, Mr. Churchill said this relief would be afforded directly by reduction of rates upon premises and indirectly by reduction of the rate burden upon the freight-carrying railways, canals, harbours and docks. In the case of the railways, &c., the relief would only be afforded conditionally on those undertakings making equivalent reductions in their transport charges, wherever practicable. The public utility undertakings —gas, electricity and water—were outside the scheme. With those exceptions any building or other property used for the purpose of production by means of manual labour would be included in the proposed relief—production, not distribution. Buildings or parts of buildings, like offices and residences, lay outside the scope of relief. The object of the Valuation Ascertainment Bill, which would speedily follow the Budget resolutions, was to separate one class of property from the other.

The Chancellor went on: It is proposed at the rating payment of October, 1929, to reduce the local rates by three-quarters. (Cheers.) The remaining quarter is left in recognition of the importance of preserving some connection between the local industry owner and the local authority in order that both the local authority and local manufacturers may have some interest in common and in each other's welfare.

The case of agriculture is exceptional. (Laughter.) The operation of the successive Agricultural Rating Acts has already relieved agriculture of three-quarters of its rates on farm lands and buildings. Farm lands and buildings will from and in October, 1929, be at once completely and permanently relieved of all rates. The farmer will continue to pay rates on his residence in the ordinary way, but as far as agricultural production is concerned he will be entirely free. Separate arrangements will be required for Scotland where the incidence of the rates and general conditions are different in important respects from England and Wales. Our object is to impart a real stimulus to the basic industries and to production generally. Therefore, there will be given a further impetus from the reduction of the railway and canal freights and of dock and harbour dues. We have decided to propose to Parliament and to the nation that the entire rating relief accorded to the railways, amounting as far as we can at present estimate to certainly not less than £4,000,000 a year, shall be concentrated on certain heavy traffics. One-fifth of the whole of that relief will be given to agriculture. The other four-fifths will be concentrated upon coal, coke and patent fuel, mining timber, iron stone, iron ore and manganese ore, limestone for blast furnaces and steel works. These traffics had been selected, said Mr. Churchill, to help the industries which employed the largest proportion of manual wage earners to their business turnover and which accounted for nearly a quarter of the total unemployment in the country, and to help the traffics to which the alternative of road transport was practically not available. Another reason was because practically the whole advantage would inure to the benefit of British productive industry. Lastly, they were selected because either they played a vital part in the export trade or because they lay at the very foundation of our national well being, external and internal. Subject to negotiations—because it had been only possible to carry this matter a certain distance—these reliefs ought to afford a reduction of about 8 per cent. on the selected traffics.

He estimated that the cost of complete derating of agriculture would be about £4,750,000. Three-fourths relief on manufacturing productive industry direct through the rates and through the medium of railways, canals, docks and harbours, would cost over £21,000,000 a year. £3,000,000 would be required to inaugurate the new scheme of local government, therefore the total money to be found by the Exchequer would amount to £29,000,000 a year. In the face of such a sum it was necessary to accumulate in advance a substantial surplus fund from which the annual yield of the new duties could be supplemented until, with the natural growth of these duties, a sum would be found to meet the outgoings of the Exchequer. "I am not prepared to mortgage future Budgets by charges which will deprive me or my successor—for I always think of him—of all means of alleviating the lot of the general taxpayer in the next few years."

He thought that by the end of 1932, allowing for £3,000,000 to bring into effect the change in the system of local government, but not allowing for the sugar relief or for the motor licence relief, the adverse balance would not exceed £4,000,000 on the working of the scheme. Then Parliament would be free to review the whole position.

In its main features this scheme must be taken as a whole. It is quite impossible for the Exchequer to rescue industry from its position as a milch cow for local needs by placing itself and its vast resources in the same unhappy plight. We cannot give the relief which is needed to industry unless, in reimbursing the local authorities, we put ourselves, the central Exchequer, in a firm and secure financial position. You cannot have the new reliefs without the new taxes and the new reforms. Everyone who approves of the general plan must take the rough with the smooth, and there is rough

as well as smooth in it. All holds together, and while considerable modifications in detail are necessarily open, the policy must be supported or opposed, accepted or rejected, as a whole.

Increased Allowances for Children.

Mr. Churchill's next announcement was greeted with loud cheering. He said that while he was unable to make any reduction on the standard rate of income tax, children's allowances, which were now £36 for the first child and £27 for the others, would be raised to £60 and £50 respectively. Moreover, the increases would be applicable in the year of the infant's birth.

These remissions give a far greater relief to the smaller income tax payer who is married and has children than would accrue from large deductions in the standard rate. This increasing of the children's allowances is another application of our general policy of helping the producer, he added, amid loud laughter.

Mr. Churchill indicated how the remission would operate in the cases of men with three children and the following yearly incomes:—

£400.—Entirely free from tax.

£500.—Tax more than halved; reduction equivalent to 2s. 9d. in the standard rate.

Men with incomes of £600, £700, £800 and £1,000 a year would get relief equivalent to reductions of 1s. 6d., 1s. 5d., 1s. 2d. and 8d. respectively in the standard rate.

ESTIMATED REVENUE AND EXPENDITURE, 1928-29.

ESTIMATED 1928 REVENUE.

	£	£
Inland Revenue—		
Income Tax	232,900,000	
Super Tax	60,000,000	
Estate Duties	72,000,000	
Stamps	28,000,000	
Excess Profits Duty	1,000,000	
Corporation Profits Tax	1,500,000	
Land Tax, &c.	850,000	
Total Inland Revenue		396,250,000
Customs and Excise—		
Customs	122,067,000	
Excise	142,518,000	
Total Customs and Excise		264,585,000
Motor Vehicles Duties—		
Exchequer Share		4,400,000
TOTAL RECEIPTS FROM TAXES		665,235,000
Post Office net receipt		8,186,000
Crown Lands		1,100,000
Receipts from Sundry Loans due to British Government		27,650,000
Miscellaneous—		
Ordinary Receipts		13,550,000
Special Receipts (including £13,200,000 from Currency Note Assets)		40,362,000
TOTAL 1928 REVENUE		756,083,000
Add—Surplus of 1927		4,239,000
		£760,322,000

ESTIMATED 1928 EXPENDITURE.

	£	£	£
Interest and Management of National Debt			304,000,000
Payments to Local Taxation Accounts			14,200,000
Payments to Northern Ireland Exchequer			5,600,000
Miscellaneous Consolidated Fund Services			2,600,000
Total			326,400,000
Supply Services—			
Defence—Army	41,050,000		
Navy	57,300,000		
Air Force	16,250,000		
Total Defence (including £16,819,000 for Pensions)		114,600,000	
Civil—			
I Central Government and Finance	2,233,000		
II Imperial & Foreign	5,604,000		
III Law and Justice	12,304,000		
IV Education	49,493,000		
V Health, Labour, Insurance (including Old Age and Widows Pensions)	75,614,000		
VI Trade and Industry	9,695,000		
VII Buildings, Rates, &c.	8,459,000		
VIII War Pensions and Civil Pensions	59,866,000		
IX Miscellaneous	536,000		
		223,804,000	
Tax Collection—			
Customs and Excise and Inland Revenue Votes (including Pensions, £925,000)		11,777,000	
			350,181,000
TOTAL 1928 EXPENDITURE			676,581,000
National Debt—Sinking Fund			65,000,000
Surplus, 1928	14,502,000		
Surplus, 1927	4,239,000		*18,741,000
			£760,322,000

*Available for
(a) Contingencies in 1928 Budget.
(b) Suspensory Fund for Rating Relief Scheme.

II.—SELF-BALANCING REVENUE AND EXPENDITURE.

Post Office.—Revenue required to meet Post Office expenditure (including £3,328,000 Pensions)	57,314,000
Road Fund.—Motor Vehicle Duties apportioned to Road Fund	21,300,000
Total	£78,614,000

WIDOWS' AND ORPHANS' PENSIONS.

(First Published Account of Transactions.)

[Contributed.]

It is difficult to realise that the Contributory Pensions Scheme has been in operation for over two years. National schemes of this kind grow so quietly and imperceptibly that it is only by those who are interested one way or another that the extent and the rapidity with which they penetrate the social life of the population can be appreciated.

It is by now familiar ground that the Contributory Pensions Scheme was merely an addition to the previous national schemes of social insurance which were embodied principally in the Health and Unemployment Acts. It was preceded by a growing opinion in favour of some provision for the elderly population who are no longer very fit for work, and for the women and children suddenly deprived by the death of a workman of the weekly earnings on which the household subsisted. How far the introduction of the scheme was precipitated by the wide and continued prevalence of unemployment which hits most hardly those very cases for which the scheme provides is, of course, a matter of speculation on which the Act itself is silent.

The scheme, of course, found its scope and a large part of its machinery in the pre-existing scheme of National Health Insurance with which it was interlocked. By this very convenient arrangement the need was eliminated for a separate system of collection of contributions and a separate system of recording contributions when collected. Straightaway the machinery of the approved society found a most important place in the working of the Pensions Scheme. The society would receive contribution cards bearing a joint contribution; they would record the contributions just as before in their registers, so far as they were in respect of health insurance, and the recording of those contributions would serve later to show whether a claim for pension complied with the statutory conditions as to insurance and contributions. Thus, naturally following on the collection of contributions by approved societies, there is entrusted to the society the highly important duty of furnishing the central department with the particulars of insurance upon which claims for pension fall to be decided.

In attributing to societies functions so essential to the working of the scheme, Parliament could have hardly expressed a more hearty vote of confidence in the efficiency of approved society administration. The insurance qualifications for pension required by the Contributory Pensions Act are the first and most important gateway to the receipt of pension. And it is precisely in respect to those essential conditions that dependence is placed upon the records of approved societies. The reposal of such a trust in the approved society emphasises, if that were possible, the need for complete accuracy in the maintenance of the society's records. However slight an error may be, it may make the difference between the success and failure of a claim for pension, and may consequently involve a large expenditure of money from the pensions account outside the statutory authority; or, again, may involve a member in loss of pension whereas, in fact, the statutory conditions were complied with.

The first account, embracing the period from January 4th, 1926, to March 31st, 1927, showing the receipts and payments during that period relative to the Treasury Pensions Account, the Pensions Account and the Pensions (Scotland) Account has now been published. There is also appended a Schedule showing amounts paid in error and irrecoverable, together with a report of the Comptroller and Auditor-General. The accounts are in the form of a receipts and payments abstract, this presumably being considered the best form possible, as it is for most governmental accounts. It is quite conceivable that a revenue account might have been the form for these accounts, but, on the other hand, this would have entailed getting a record of outstanding revenue and liabilities. When it is remembered that the pension payments are made by postal draft and that pensioners do not always cash their orders on the due date, it will be seen that to treat as expenditure "postal drafts issued" would also necessitate arriving at "postal drafts uncashed" to show the true position for a statement of balances. Again, as regards revenue, it would appear from the nature of the transactions that to arrive at the revenue from stamps sold would have necessitated a return from every post office of stamps unsold in their hands as at the closing date—March 31st, 1927. The form, therefore, in which the accounts are now issued may be taken as showing as nearly as possible the revenue and expenditure for the period. After yearly accounts are issued, comparisons with reasonable safety one year with another will be available, as any revenue or expenditure outstanding at the end of one year will be approximately balanced by similar items in the following year. No record of the number of pensioners appears in the abstract published, but these and similar statistics of awards made and applications rejected will, no doubt, be published in the annual reports of the two departments concerned—the Ministry of Health and the Scottish Board of Health.

Before proceeding with a consideration of the figures published in the first set of accounts referred to, a few points on the general finance will not be out of place. The Comptroller and Auditor-General's report appended to the accounts gives a very clear statement of the scope of the accounts. The main provisions of the Widows', Orphans' and Old Age Contributory Pensions Act, 1925, are now pretty well known, and both the Ministry of Health and the Scottish Board of Health have issued many explanatory pamphlets dealing with the Act from various standpoints. With the first accounts now published the general finance of the scheme can be studied, and the scope and extent of this great social scheme appreciated. As is pointed out in the auditor's report, the contribution of an insured person in respect of pensions, and that in respect of health insurance, are combined in the same stamp. The cash amount represented by the stamps placed on the workers' cards finds its way to the central authorities—the Ministry of Health and the Scottish Board of Health—from the Post Office. The proportion applicable to the National Health Insurance contribution is

credited by the central authorities to the health funds of the different countries respectively, while the pensions proportion goes into the pensions account, which is the name given to the account kept for English contributions, and the proportion applicable to Scotland is paid into the pensions (Scotland) account. From these two funds the pensions to widows and orphans have been met. The total amount paid in pensions from these funds may be summarised thus:—

WIDOWS' PENSIONS.		
Non-Contributory—		
England	£5,770,850	
Scotland	818,578	
Total ..		£6,589,428
Contributory—		
England	£1,160,328	
Scotland	137,174	
Total ..		1,297,502
ORPHANS' PENSIONS.		
Non-Contributory—		
England	£261,044	
Scotland	50,219	
Total ..		311,263
Contributory—		
England	£18,808	
Scotland	2,967	
Total ..		21,775
Total Widows' and Orphans' Pensions paid		£8,219,968

From the above it will be seen that the total amount paid in pensions to widows and orphans for Scotland and England combined is £8,219,968.

In paragraph 5 of the auditor's report the figures given are those for England only, whereas in paragraph 2 the Comptroller and Auditor-General gives figures relative to the two funds. In paragraph 5 the Scottish figures have been ignored. In place of the figures £7,211,030 and £6,031,894 referred to in paragraph 5, the figures should be those referred to above, namely, £8,219,968, of which £6,900,691 represents pensions of a non-contributory category.

Any surplus cash in the two funds is to be remitted to the credit of the Treasury Pensions Fund. The Treasury Pensions Fund is set up in terms of sect. 11 of the Act as follows:—

> "Any sums standing to the credit of the pensions account which are not required to meet expenditure shall from time to time be paid over to the Treasury and by them credited to an account to be called the Treasury Pension Account."

A very important provision in sect. 11 is sub-sect. (5), which states:—

> "If at any time it is shown to the Treasury that the sums in the pensions account are insufficient to meet the liabilities to be met thereout, the Treasury may out of the Treasury Pension Account issue to the pensions account any sums required for the purpose of discharging those liabilities."

The Government Actuary, when reporting on the finance of the scheme, stated:—

> "The contributions, although related to the benefits of those who will have come under the scheme in their youth, will have been wholly inadequate for the great mass of the 15,000,000 contributors brought in at the beginning. As has been shown, a large deficiency arises from this cause at the outset, and this deficiency is augmented by the benefits granted to widowed mothers and children for whom no contributions have been paid. From 1928 the resulting loss is operative; a growing charge falls upon the Exchequer, and this represents, in substance, interest upon the deficiency."

Providing for the insufficiency of contributions to meet the initial liabilities referred to by the Actuary, there is provision made in sect. 11 (3) for £4,000,000 per annum being provided by Parliament for ten years and such other sum as Parliament may determine after that period has expired. These sums are to be paid into the Treasury Pensions Account, and, as already mentioned, the moneys in this account meet any deficiencies on the pensions accounts both in England and Scotland.

From the figures published of the Treasury Pensions Account it will be seen that there has been handed over from the Ministry of Health and from the Scottish Board of Health £16,708,850, as follows:—

From the Ministry of Health	£15,238,000
From the Scottish Board of Health ..	1,470,850
	£16,708,850

and that the contribution of £4,000,000 referred to in the Act has likewise been accounted for. It will also be observed that these amounts have been handed over to the National Debt Commissioners for investment, and that the interest on the investments appearing in the accounts amounts to £286,357 10s. The investments held are noted at the end of the account, and are:—

	Cash.	Stock.
4½% Treasury Bonds, 1932	£20,994,390 17 6	£21,187,000
Cash balance on Treasury Investment Account, March 31st, 1927 ..	816 12 6	—
	£20,995,207 10 0	£21,187,000

It will be observed that the National Debt Commissioners have placed all their eggs in the one basket.

Both the pensions account and the pensions (Scotland) account closed with balances at March 31st, 1927, and these balances have been arrived at after investing the £20,000,000 odd referred to above, but for the year 1928 and subsequent years it would appear that recourse will require to be had to the Treasury Pensions Account to keep those two accounts in funds. As a matter of fact, the provisions for old age pensions at age 65 did not take effect until January 2nd last, and accordingly no payments for such pensions appear in the accounts under review. With this further increase in pensions it will be necessary to draw on the Treasury Pensions Account as originally anticipated by the Government Actuary.

From the accounts published it would appear that there

has been spent in administration costs the sum of £928,736, as follows:—

England	£823,662
Scotland	105,074
	£928,736

No indication is given in the accounts whether this amount represents all the costs for the period, as the form of accounts is that of a receipts and payments abstract. Taking the figures as published, however, the cost of administration for England (£823,662) represents 3.54 per cent. of the contribution income (£23,285,015), whereas for Scotland the cost of administration (£105,074) represents 4.04 per cent. of the contribution income (£2,601,456). For the two countries combined the total administration (£928,736) represents a little over 3½ per cent. of the total contributions of £25,886,471. At first sight it might appear that the administrative costs in Scotland, being 4.04 per cent. of the income, show a higher cost of administration than for England, 3.54 per cent., but on reducing the administrative costs as a percentage on the pensions paid, the figure works out for Scotland at 10.414 compared with 11.422 for England, so that no general conclusions can be drawn from the statement of accounts alone and the figures given, without reference to the reports of the departments concerned showing the number of awards in each country. It would appear that the income from stamps sold in Scotland, on which the percentage of 4.04 referred to was first of all based, is less relatively than for England, and as the income has no vital connection with the amount paid in pensions, a better basis for expressing percentage of administrative costs appears to be the expenditure. Even with the percentages expressed on expenditure no general conclusion can be drawn for, as pointed out in the last report of the Scottish Board of Health, that department does work on behalf of the Customs and Excise in respect of old age pensions over 70. The amount paid from the pensions funds as costs of administration is in terms of the instructions given by the Treasury under sect. 12 of the Act, which states:—

> "Any expenses incurred in the administration of this Act, to such extent as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament."

Provided that such sums as the Treasury may direct shall be paid from the pensions account and shall, in accordance with regulations made by the Treasury, be applied as an appropriation in aid of the moneys provided by Parliament for such expenses.

Put in less technical terms, Parliament votes the sums required to meet the costs of the administration by the Government departments dealing with pensioners, but these departments recover from the pensions fund that portion of their expenditure applicable to pension work. The three departments mainly concerned with the administration of pensions are the Ministry of Health, the Scottish Board of Health and the Post Office. Their administrative costs so far as applicable to pensions ultimately fall on the pensions funds, and are as stated above.

In considering the costs of administration it must be noted that this is the first or initial period, and that many costs may not be repeated. One can readily appreciate that to bring the initial body of pensioners into the scheme much would be spent which will not recur. Arrangements were made whereby the central departments informed all societies of the correct date of birth of applicants where the dates differed from the societies' records, and this free of charge to societies. This procedure must have cost a considerable sum, but it will be of the most material assistance to societies, especially in relation to the 65-70 group of pensioners.

Summarising the accounts as published, the following gives a bird's-eye view of the transactions:—

RECEIPTS.

	England.	Scotland.	TOTAL.
Sale of Stamps at Post Office ..	£20,736,170	£2,456,473	£23,192,643
Other Government Departments ..	176,592	8,392	184,984
Employers' Deposits	1,220,369	66,392	1,286,761
	£22,133,131	£2,531,257	£24,664,388
Contributions in Cash—			
Excepted Persons	437,075	39,083	476,158
H.M. Forces	738,713	34,850	773,563
	£23,308,919	£2,605,190	£25,914,109
Less Refunds	23,904	3,734	27,638
	£23,285,015	£2,601,456	£25,886,471
Miscellaneous	200	—	200
	£23,285,215	£2,601,456	£25,886,671

PAYMENTS.

	England.	Scotland.	TOTAL.
WIDOWS' PENSIONS—			
Contributory	£1,160,328	£137,174	£1,297,502
Non-Contributory	5,770,850	818,578	6,589,428
	6,931,178	955,752	7,886,930
ORPHANS' PENSIONS—			
Contributory	18,808	2,967	21,775
Non-Contributory	261,044	50,219	311,263
Total Widows' and Orphans' Pensions	£7,211,030	£1,008,938	£8,219,968
Administration	823,662	105,074	928,736
Treasury Pensions Fund—Amount remitted	15,238,000	1,470,850	16,708,850
Pensions paid in error and irrecoverable	1,091	217	1,308
Balance in hand at March 31st, 1927	11,432	16,377	27,809
	£23,285,215	£2,601,456	£25,886,671

In paragraph 9 of the Comptroller and Auditor-General's report appears a very interesting point indeed. It is pointed out by him that the award of a pension which had been made on an erroneous interpretation of regulations could not be revised unless and until new facts were brought to the notice of the Minister as provided in sect. 29 (3) of the Act.

Continuing, the Comptroller and Auditor-General states:—"The position so arising, in which erroneous awards made in such circumstances appear irreparable, renders my audit in these cases ineffective, and resembles that which arose under the earlier Old Age Pensions Acts, subsequently rectified in the Act of 1911, as indicated in the epitome of the reports from the Committees of Public Accounts. I understand that the Ministry have had the matter under consideration, and propose to ask for legislation to enable due revision to be made of awards thus made in error. I have inquired when it is anticipated that the legislation will be introduced, and have been informed that the necessary amendment of the Act will be made at the earliest opportunity, but that it cannot yet be stated when it will be possible to introduce such amending legislation."

New Company Legislation.

A LECTURE delivered to the South of England and the Notts., Leicester, Derby, Lincoln and District Societies of Incorporated Accountants by

MR. C. A. SALES. LL.B., F.S.A.A.

MR. SALES said: The subject of this lecture was decided upon last autumn, when it was anticipated that the proposed amendments to the law of companies would have been given statutory effect before Parliament adjourned in December. Despite the fact that the Companies Bill had already passed the House of Lords, a beneficent Government felt that there were more important matters to be dealt with in the brief autumn session, and the long over-due legislation in which we, in common with a large section of the community, are interested, was deferred.

The Company Law Amendment Committee was appointed in February, 1925, and after holding 38 meetings and receiving and considering evidence from all sections of the business and professional community, submitted their report and recommendations to the Board of Trade in May, 1926.

These recommendations were adopted by the Government in substance, and were incorporated in a Bill which was introduced in the spring of 1927, being dealt with by the House of Lords first in order to leave the time of the Commons free for the Budget and trade union legislation. It is now receiving the attention of the lower House, and will probably pass through all its stages by July.

[Even then, there will be delay in its operation, since the intention is to introduce a consolidating statute. This will be necessary to a completely satisfactory appreciation of the amendments, owing to the Bill, as drafted, affording a good illustration of the present vicious tendency (if I may use that adjective in this connection) of legislation by reference, although it is not quite so bad as some statutes recently passed.

I must therefore, deal to-night with proposed, rather than actual legislation, and the best method of treatment, I think, is to follow the Bill itself which has been drafted to run more or less in sequence with the 1908 Act.

In view of the large number of limited companies and the immense amount of capital involved, fraud and evasion of legislative safeguards are bound to occur, but, as the Committee stated, the public interest which was directed to such cases when they came to light tended to divert attention from the vast number of honestly conducted concerns; and whilst it was most desirable that all loopholes for malpractices should be closed, if possible, amendments in the law must not be made so as to impose an intolerable burden on the rest of the business world.

NAME OF COMPANY.

The first amendment, with which I propose to commence, is in the choice of the company's name. It must not contain the words "Royal" or "Imperial" except with the consent of the Board of Trade, as such use is regarded as an infringement of the Royal Prerogative. There is also a restriction upon the inclusion in the name of the expression "Chamber of Commerce" since such bodies carry on special duties well known to the public and the indiscriminate use of the term is calculated to mislead. Such bodies may, however, be incorporated under sect. 20 of the main Act which relates to the omission, in certain circumstances, of "limited" from the company's name. Similar considerations have induced the Commons in the Committee stage to prohibit the unauthorised use of the expression "Co-operative Society."

ANNUAL SUMMARY.

An important amendment in connection with the statement in the form of a balance-sheet forming part of the annual summary, is proposed. At present it is obligatory for a public company to file a statement made up to a date specified therein, the intention obviously being to enable the last prepared balance-sheet to be included in the summary. A date specified by the Act would have been impracticable as the obligation on a company to prepare final accounts made up to any date other than that at which the books were normally closed would have imposed too great a burden. The draftsmen of the original Act apparently did not, however, foresee that the provisions, as they exist, would enable a company to file the same statement year by year and thus nullify the utility of the information intended to be supplied.

In future, a certified copy of the last audited balance-sheet must be filed, together with a copy of the auditor's report, an improvement sufficiently obvious to need no comment.

VARIATION OF RIGHTS OF SHAREHOLDERS.

It may be found necessary, at times, to modify the rights attaching to particular classes of shares, provision therefor being usually contained in the Articles. Such desire for modification has arisen, for example, in a good many cases where preference shares were issued during the war and immediately thereafter, carrying a high rate of dividend which in later years of reduced prosperity it has been felt the company could not afford. When a reduction in the rate of dividend is assented to by holders of preference shares only no objection can be raised; but complaint has been made that persons holding both preference and ordinary shares have voted on the proposal, and, as ordinary shareholders, have considerably benefited thereby.

It would be unfair to deprive such shareholders of their right to vote, and the safeguard proposed is a possible review by the Court of the variation. This will be secured upon the petition of holders of not less than 15 per cent. of the issued shares of the class adversely affected provided such persons did not vote in favour of the modification. In such a case, the variation shall not take effect until confirmed by the Court. Application to the Court must be made within seven days of the date of the resolution by such shareholders as may be delegated in writing by the petitioners so to do.

REDEEMABLE PREFERENCE SHARES.

An entirely new departure, so far as limited companies are concerned, is proposed by the introduction of provisions for the redemption of preference shares. Such shares must of course be issued with the right of the company to redeem, attached, the issue being authorised by the Articles.

The redemption can only take place by means of funds appropriated out of profits which would otherwise be available for dividend, or out of the proceeds of a fresh issue of shares made for the purposes of redemption.

The effect will be that where a company is compelled by reason of abnormal money conditions (*e.g.*, during the latter years of the war and immediately after the armistice) to issue preference shares carrying a high rate of dividend, the matter can be adjusted when the position becomes normal by a subsequent issue at a reduced rate and the redemption of the existing issue. No such shares can be redeemed unless they are fully paid.

When such shares are redeemed out of profits, the credit thus created in the books of account will be taken to a Capital Redemption Reserve Fund, the procedure being similar to that followed at present where a reduction of capital out of

accumulated profits is effected under sect. 40 of the Companies (Consolidation) Act, 1908. This section is, in the circumstances, deemed to be no longer of service, and will be repealed.

There must be included in every balance-sheet of a company which has issued redeemable preference shares, a statement specifying what part of the capital consists of such shares and the dates of authorised redemption.

Reduction of Capital.

A minor amendment is introduced in connection with the hitherto compulsory addition of the words "and reduced" to the name of the company when a scheme of capital reduction is submitted to the Court for confirmation. These words need not in future be added as from the date of the passing of the necessary special resolution, but from the date of the order of the Court (or even later); and in special cases the Court may dispense altogether with the provision.

The Court will also have discretion to dispense with a list of objecting creditors, which discretion it does not at present possess in all cases.

Special Resolution.

The Committee in its report took the view that there was no apparent necessity for two meetings to be convened to pass a special resolution, and their recommendation, which has been adopted, was that such a resolution should be passed at one meeting only in manner similar to that of an extraordinary resolution, provided that not less than fourteen days' notice of the meeting be given (or such less period as *every* shareholder shall agree to accept). This latter proviso will enable private companies to deal with important matters with more expedition than was formerly possible.

Apparently, therefore, there will be no substantial difference between an extraordinary and a special resolution, the distinction resting not on the character of the resolution or majority required, but on the length of notice to be given.

Offers of Shares for Sale.

It would be surprising if an amending Companies Bill did not include some provision for controlling, in some measure, the practice which has developed of late years of causing an issue of shares or debentures to be made through the medium of a financial house who dispose of these shares in the capacity of principals. The offers for sale which form the method of invitation to the public do not come within the definition of a prospectus, nor, not being issued by the company, is there any obligation incumbent upon those responsible for the offer to supply information on the lines laid down by sect. 81 of the Companies (Consolidation) Act.

Although many advantages might legitimately accrue to the company by disposing of its shares *en bloc* in this way, and most offers for sale were quite *bonâ fide*, a loophole was afforded of which unscrupulous people have not been slow to take advantage, with the result that the protection to the public intended from the operation of sect. 81 and sect. 84 of the main Act might not have existed, and the clock has in fact been put back nearly 40 years.

In future such documents in the nature of "offers for sale" will be regarded as prospectuses, with the consequent necessity of disclosure of relevant information and carrying similar liabilities to those responsible for their issue.

Precautions are, however, necessary to protect persons who advertise for sale small blocks of shares which they hold as investments. Some shares or stocks, particularly local stocks, are frequently not quoted or even dealt in to any extent on the Stock Exchange, and advertisement is occasionally resorted to in order to secure a better price. In such cases the would-be sellers will not be saddled with responsibility for disclosure of information relating to the company, the intention being only to deal with those cases where the financial house is in fact, if not in law, issuing the shares on behalf of the company. It is not infrequent for the company to approve the draft of the document issued, and in many cases the information consists generally of a long letter dictated by the chairman of the company. The suggested amendments will apply therefore:—

(*a*) When the offer of shares or debentures for sale to the public was made within six months after the allotment or agreement to allot to the financial house;

(*b*) Where at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

Sect. 80 of the Companies (Consolidation) Act shall have effect as if the persons making the offer were persons named in a prospectus as directors of a company, and in addition to the particulars outlined in sect. 81 the offer for sale must state the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates, and the place and time at which the contract under which the said shares or debentures have been or are to be allotted, may be inspected.

Where such an offer for sale is made by a company (not being, of course, the original company) the document must be signed by two directors thereof.

A company must not issue, either directly or through an intermediary, any invitation to subscribe for shares or debentures, or issue such to members of the public unless the application form or invitation is accompanied by a prospectus complying with the provisions of sect. 81 of the main Act.

The last mentioned section is to be extended by the addition of a clause providing for inclusion of a statement as to the rates of dividend, if any, paid by the company in respect of each class of shares in each of the previous three financial years, and cases in which no dividends have been paid within this period.

If no accounts have been prepared in respect of any part of the period in question the fact must be stated, and whether any interim dividend, and if so the rate thereof, during such three years has been paid.

If the proceeds, or any part of such proceeds, of the issue of shares or debentures, are or is to be applied in the purchase of any business, the amount, as certified by the auditors of the accounts of the business, of the net profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus, must be stated.

Where the business has been carried on for a less period than three years, the above information must be given for the period available.

Minimum Subscription.

When provision was originally made for the inclusion in the prospectus of the minimum subscription, the intention was to protect would-be shareholders against the possibility of an allotment of shares to an extent wholly insufficient for the working requirements of the company, and the probability that such a course would only lead ultimately to liquidation.

You will remember that, at present, the minimum subscription is the least amount mentioned in the Articles upon which the company can proceed to allotment, and if the Articles are silent then the whole amount offered for subscription must be subscribed.

Like other good intentions, the anticipated benefit has not always resulted, since a means has been found of evading the spirit whilst conforming with the letter of the law, by introducing a purely nominal figure as the minimum subscription. It is true that such a practice has encouraged the underwriting of the issue, but this is a matter for the discretion of the directors, and the fact remains that the present provisions are practically nullified.

In future the minimum subscription shall be the amount required, in the opinion of the directors, to cover the following:—

(1) The purchase price of any property purchased or to be purchased which is to be defrayed out of the proceeds of the issue;

(2) Any preliminary expenses payable by the company, such to include commissions;

(3) Working capital.

It must be admitted that this is a considerable improvement.

The amount payable on application is still limited to a minimum of 5 per cent. of the nominal amount of the shares, but the allotment will be in order if the cheque paid by the applicant has been received in good faith by the company and the directors have no reason for suspecting that the cheque will not be honoured. Heretofore it has been necessary for the company actually to have received the money, *i.e.*, the cheque must have been cleared. This has not always been adhered to in the past, and it is felt that where the transaction is *bona fide* no good purpose is served by the continuance of what is, after all, a somewhat unnecessary course.

Issue of Shares at a Discount.

Although there is no direct prohibition in the Act itself of the issue of shares at a discount, such a course has been judicially interpreted as being in effect a reduction of capital and therefore irregular.

Whilst it is reasonable that a company should receive the full consideration for the shares it issues, since the assets would not otherwise be equivalent to the capital liability, the restriction has, at times, caused embarrassment. Let us suppose that a company has been in existence for some years, and, although it has traded successfully and is in a healthy condition, the general financial position is such that its shares stand on the market at, say, 17s. each. It then requires further capital for the purpose of expansion. What kind of response could it expect from the public if shares were issued at par when purchases could be made on the market at 17s.? It is thus forced to issue shares giving such a preference as will encourage the public to pay the full nominal value for them. The power to issue shares at a discount is to be given in the new Act under safeguards sufficient, it is hoped, to prevent an abuse of the privilege. Not less than five years must, since the date of the issue, have elapsed from the date on which the company is entitled to commence business.

If the company has already issued shares of the same class as the shares now to be issued the market price of such issued shares must be less than their nominal value, and the new issue price must not be less than the market price by more than 10 per cent., the maximum of the discount being 50 per cent. of the nominal value. For example, if the shares are quoted at 15s. each the new issue price must not be less than 15s. less 10 per cent., that is 13s. 6d., whilst if the shares are quoted at less than 10s. the new issue must not be made at less than 10s., which means in effect in the latter case there would probably be no issue at all. If the projected issue is not of a class of shares already issued the discount must not exceed 20 per cent.

Particulars in the form to be prescribed, of any discount allowed and of any discount not yet written off must appear in the annual summary, every prospectus relating to the issue of the shares, and every balance-sheet issued subsequently to the particular issue concerned. In many cases shares would not be quoted on the stock exchanges, and in this event the market price is to be determined by the auditors of the company.

Although these recommendations might appear at first sight to be somewhat revolutionary, it must be remembered that although it has not been lawful to issue shares for cash except for the full consideration, there has been nothing to prevent the issue of shares as fully paid up for the purchase of goodwill and other assets which may not have been worth the figure at which they have been taken over.

Sect. 89 of the Act is to be amended to provide for a maximum of 10 per cent. being paid in respect of underwriting commission or commission for placing shares.

Accounts.

One of the most important amendments, if not the most important, is with regard to the company's accounts. The provisions, hitherto, have been contained, not in the Act itself, but in Table A, which, as you are doubtless aware, is adoptive only. It has been the opinion amongst many sections of the business community that some statutory obligation should be imposed on the company in this direction. It is true that most companies have adopted Table A wholly or in part, and do prepare accounts, although perhaps they are not always so informative as they might be, but such a vital matter should not be left to the honesty and sense of fairness of the community whilst so much opportunity is afforded those who, for one reason or another, desire to evade the light of publicity. The recommendations virtually have the effect of transferring the clauses relating to accounts from Table A to the Act itself.

Every company must keep a cash book, books recording sales and purchases of goods, and particulars of the assets and liabilities. The books must be kept at the registered office, or at such other place as the directors think fit, and shall be open at all times to inspection by the directors.

Not later than eighteen months after the incorporation of the company, and subsequently each year, a profit and loss account must be prepared, to be laid before the company in general meeting, and made up to a date not more than nine months prior to such meeting. Where the company carries on business abroad, an interval of twelve months is the limit. The Board of Trade may extend these periods in certain cases.

A balance-sheet must be prepared each year and submitted to a general meeting in conditions similar to those applicable to the profit and loss account. Attached to such balance-sheet must be a report by the directors with respect to the state of the company's affairs, the amounts of any proposed dividends, and the amount it is recommended to carry to reserve. The wilful contravention of these provisions by a director will entail not only a fine not exceeding £200, but imprisonment for a term not exceeding six months.

Every balance-sheet shall contain a summary of the share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of such liabilities and assets, and to explain how the values of the fixed assets have been arrived at, such requirements being similar to the existing provisions of sect. 26 with regard to the statement filed with the annual summary, and which, as stated earlier, is considerably amended.

There must also be stated separately the amount of any preliminary expenses not written off, and the present amount of the goodwill if an account therefor is raised in the books. If any liability is secured the fact must be so stated, although

it will not be necessary to indicate the specific assets upon which the charge is created.

Shares in and loans to subsidiary companies must also be separately stated, and a very important advance upon existing practice is obtained by the requirement that holding companies must attach to every balance-sheet a statement signed by such directors, who are required to sign the balance-sheet itself, stating how the profits or losses of the subsidiary company, or where there are two or more subsidiary companies the aggregate profits or losses of those companies, have been dealt with in or for the purpose of the accounts of the holding company, and, in particular, how and to what extent—

(1) Provision has been made for the losses of any subsidiary company, either in the accounts of the subsidiary or of the holding company, or both; or

(2) Losses of any subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of that company as disclosed in the accounts.

Although this will not prevent the possibility of the directors of the holding company from using the dividends received from profit-making subsidiaries to enable a dividend to be paid upon its own shares without taking into account the losses on other subsidiaries, the publicity which must be given, at any rate to the shareholders, of the existence of such losses, will tend considerably to check the practice. The Committee did not feel that a sufficient case had been made out to justify any more stringent recommendation. There are, of course, saving clauses when the requisite information cannot be obtained, and also as to what will constitute a subsidiary company for the purpose of the Act.

The annual accounts shall contain particulars showing the aggregate amount of any loans which, during the period concerned, have been made either by the company or by any other person under a guarantee from, or on a security provided by, the company to the directors and other officers, including any such loans repaid during such period; and the aggregate amount of any loans made to directors and officers at any time previously and still outstanding. These provisions are not to apply to companies whose normal business includes the lending of money, or to loans to employees not exceeding £2,000 in each case and certified by the directors to have been made in accordance with present or projected practice of making loans to employees.

It will not be competent for any partner, or a person in the employment of any officer of the company, to be appointed as an auditor of a public company. The first auditors may be appointed by the directors at any time before the first annual general meeting, and the auditors shall hold office till that meeting unless previously removed by the company in general meeting. If the directors fail to exercise their power, the company in general meeting may make the appointment. This clause supersedes the present provisions for the appointment of auditors by the directors before the statutory meeting.

RECONSTRUCTIONS.

Where a company proposes to dispose of its assets and undertaking to another company in consideration of the issue of shares in that company for rateable distribution among the shareholders of the former, the rights of dissentient shareholders are at present safeguarded under sect. 192 of the Companies (Consolidation) Act in that they may secure disposal of their shares at a price to be agreed upon or under arbitration. It is not proposed to withdraw this right, but new provisions are proposed for dealing with a converse case.

Where a scheme involving the transfer of shares, or any class of shares, in a company (which for the sake of clarity we will call "A") to another company ("B") has, within four months after the making of the offer by company B been approved by holders of not less than nine-tenths in value of the shares affected, company B may at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and, subject to a right of appeal by the shareholder to the Court, the B company shall be entitled and bound to acquire such shares upon the same terms as those agreed to generally under the scheme.

Where a scheme has been approved before the commencement of the Act, the shares of the dissentient shareholder shall be acquired on such terms as the Court may direct. The company B shall transmit to company A at the expiration of one month from the date of the notice to the dissentient shareholder, a copy of the notice and pay to such company the amount representing the price payable for the shares, and the former company shall be entitled to be registered as the holder of such shares. Company A shall pay such money received into a separate account to be held on trust for the shareholders affected. These provisions certainly appear to be rather arbitrary in their operation, although naturally a small minority must be more or less bound by the resolution of the majority (which must be to the extent of 90 per cent. of the total holding).

The Committee, in its report, were of the opinion that the amalgamation of two or more companies should be possible without the necessity for liquidation of either, and this view is reflected in the Bill, wherein elaborate provisions are made for such amalgamation, the scheme being operative under sect. 120 of the Companies (Consolidation) Act, which requires the sanction of the Court.

A cumbersome section (45) of the Companies (Consolidation) Act has been swept away, since it is proposed that sect. 120 shall operate to include all re-organisations of share capital including consolidation or subdivision for which the section to be repealed provides.

PRIVATE COMPANIES.

As you no doubt remember, a private company must contain certain restrictive clauses in its Articles, the contravention of which will not deprive the company of its status as a private company but will merely deprive it of certain of its privileges. This applies where the company fails to carry out the terms of the Articles, but if it alters its Articles it will in future become a public company, and within fourteen days from the date of the alteration must file a prospectus or statement in lieu thereof with the Registrar. The special resolution required for the purpose of an intentional conversion of the company from a private to a public one will still be passed in effect, as such a resolution is requisite for the alteration of the Articles, but the existing provisions are strengthened and heavy penalties for default imposed.

LIQUIDATION.

Certain alterations are proposed in connection with liquidation procedure, designed to bring law and practical considerations more in harmony. In many cases it is almost impossible to obtain a satisfactory statement of affairs, and where there is an employee of the company of at least one year's standing who, in the opinion of the Official Receiver, is competent to give the requisite information he may be regarded as a person upon whom there is an obligation to submit such a statement. The Court may, in special cases, dispense with the statement altogether.

Where a company is being wound up by the Court the Court may, on the application of the liquidator, direct that any property belonging to the company, or held by trustees on

its behalf, shall vest in the liquidator by his official name, with concurrent rights of bringing or defending an action relating to such property.

It is probably due to the inclusion of this provision that liquidators are to be given powers of disclaiming onerous property similar to those enjoyed by a trustee in bankruptcy. Such powers have not heretofore been necessary as a liquidator acted as agent only in most cases, and incurred no personal responsibilities as the *de jure* owner. Even so, the new arrangement appears a little inconsistent since the property will only vest upon the application of the liquidator who would scarcely make the application where the property is known to be onerous. Moreover, the power of disclaimer is given to *all* liquidators, whereas the vesting provision is given only to liquidators in compulsory liquidation. However, it must be remembered that onerous factors are frequently discovered only at a later stage in administration, this being evidenced by the seemingly long period of twelve months from the date of the liquidator's appointment or date of knowledge of the existence of the property, as the case may be.

When a company is being wound up voluntarily by reason of its inability to meet its obligations, the principal persons affected are the creditors. The shareholders, of course, do not view the position with satisfaction, but since the capital of the company can be regarded as non-existent and no return to the members can, in the circumstances, be expected, the pleasure of anticipation is not theirs, and there seems no reason for their control of the proceedings as against creditors who are more concerned with the results. This aspect is particularly reflected in the appointment of the liquidator, which has always been primarily in the hands of the members, although the creditors could apply to the Court for the appointment of a joint or alternative liquidator.

In future, the directors must hold a meeting prior to sending out the notices of the meeting at which the resolution to wind up is to be submitted, and, if circumstances justify it, at least two directors must make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company and have formed an opinion that the company will be able to pay its debts in full within six months from the commencement of the liquidation, such declaration to be filed with the Registrar of Joint Stock Companies.

In the alternative, a meeting of creditors must be summoned for the day on which the special meeting of the company is to be held (or the day following that day), and the directors must lay before them a full statement of the position, one of the directors presiding at the meeting. The creditors and the company may each nominate a liquidator, and if different persons are nominated, the appointee of the former body will act, with a right of appeal by dissentient parties to the Court within seven days.

The creditors may appoint a committee of inspection, which at present is only appointed by the Court, upon application. Provision is made for representation by the company on such committee, with certain rights of objection by creditors, disputes being settled upon application to the Court. Existing statutory provisions relating to the conduct of proceedings, meetings, &c., are to apply to such committees, and doubtless rules will be made to define the powers which the committee may exercise.

Past and present officers may be prosecuted in respect of the commission of offences similar to those enumerated in sect. 154 of the Bankruptcy Act, with like punishments. In fact, an attempt is made to bring liquidation more into line with bankruptcy, which, referring as it does to individuals, has nearly always been the pioneer of improvements. Failure to keep proper books of account during the two years immediately prior to the winding-up will involve directors or officers concerned in the possibility of a year's imprisonment.

Where, in the course of the liquidation, it appears that the business has been carried on with intent to defraud creditors, the Court may, upon the application of the Official Receiver, the liquidator, a creditor, or contributory, declare that past or present directors who were responsible for the management of the company shall be personally responsible for all debts and liabilities as the Court shall direct. Any interest by such directors in the company's assets may be charged with such amount due upon the Court's order. Directors may also be liable, on conviction on indictment of knowingly being a party to the fraud, to one year's imprisonment. No person subject to the above penalties can be directly or indirectly concerned as director in the management of a company for such period, not exceeding five years, from the date of declaration of liability or conviction, as the case may be. Further heavy penalties are specified in the event of contravention. More detailed procedure is outlined for the initiation of prosecutions in all branches of liquidation, a provision which is badly needed.

Any clause contained in the Articles of a company, or in any contract with the company, for exempting any director, manager or other officer from, or indemnifying him against, any liability for negligence, default, &c., shall be void. This is the natural result of the *City Equitable* decision, wherein an action for negligence under sect. 215 of the main Act was nullified by an indemnifying clause in the Articles. Any such clauses already in existence shall cease to operate at the expiration of six months from the commencement of the Act (when passed).

An undischarged bankrupt is to be prohibited from acting as a director of a company except with the leave of the Court wherein his bankruptcy was conducted, under penalties of heavy fine or imprisonment. This is evidently designed to prevent an undischarged bankrupt, who is under heavy penalties if he endeavours to obtain credit to the extent of £10 or upwards from any one person without disclosing his disability, from forming a company of which he is practically the sole shareholder, the credit then being obtained by the company without disclosure, and, so far as the bankrupt is concerned, with impunity.

Where a company is in liquidation, or a receiver or manager is appointed, every invoice, order for goods, or business letters issued by or on behalf of the company, the liquidator or receiver, shall contain a statement that the company is in liquidation, or that a receiver or manager has been appointed. This is a desirable piece of legislation, as the public dealing with the company, and especially those supplying goods to the company, can then have the opportunity of protecting their interests.

CONCLUSION.

In the above paper I have endeavoured to review the most important changes proposed to be effected, dealing with the various matters with a freedom from technicalities as far as the complexities of the subject permit, and eliminating penalties and minor savings which would be calculated only to confuse at this stage. Within the time at my disposal, I have aimed at securing a general bird's eye view rather than a detailed analysis, and I have also refrained from dealing with several provisions, important enough in themselves, which, however, do not directly bear upon our work as English accountants.

A detailed study of the Act when passed, together with any amendments made in its passage through the House, will be incumbent on all, practitioners and students alike.

Correspondence.

SIMPLIFICATION OF THE INCOME TAX.

To the Editors *Incorporated Accountants' Journal.*

SIRS,—On page 236 of the *Journal* for the current month appears the following paragraph, which is an extract from a lecture, delivered by a recognised authority on income tax, before the Birmingham and Midland Society of Incorporated Accountants:—

> "For the change over period the position will be that super tax will be payable for 1928-29 on January 1st, 1929, on the 1927-28 income, and sur tax will be payable for 1928-29 on January 1st, 1930, on the statutory income for 1928-29. At first sight it appears that there are two taxes or 1928-29 on the same income, viz, super tax and sur tax. It is true that both taxes are payable for 1928-29, but super tax for 1928-29 is really a tax for 1927-28, and so the double tax is a double tax in appearance only and not in reality. This will mean that an individual's income will bear sur tax for the exact number of years that he has had an income above the necessary limit, whereas at present, owing to the provision in the case of death, a year's, or a portion of a year's, liability may escape. Sur tax is to be assessed by the Special Commissioners."

May I crave sufficient space to comment on the above?

A change over from super tax to sur tax does no more than imply a substitution of the last named tax for the former, but by altering the statutory measure of income for sur tax purposes the Government has in fact imposed two super taxes for the fiscal year 1928-29, which can be quite easily demonstrated as follows:—

> Super tax was first imposed in the fiscal year 1909-10, and the statutory measure of income for super taxation was fixed on the income of the preceding year. Up to and including the fiscal year 1928-29 super tax has been in force for twenty years, and as the tax is being levied for 1928-29 it is quite clear that it will have been enforced for twenty years and for no less a period. If, as is the case, sur tax is merely a continuation of super tax, then it is obvious that by charging sur tax for 1928-29 there is a double impost of super tax for 1928-29; for the mere postponement of the date for payment of the second duty by one year does not alter the fundamental nature of the sur tax which is erroneously called "a substituted tax." The snag, or shall I say deception, that has been practised on the taxpayer lies in the fact that so long as he continues to live he will not be affected by the change over, but on his death his estate will be penalised by the grabbing of a tax that was never meant to be payable when super tax was first introduced.

I am surprised at the attitude adopted by the lecturer that super tax for 1928-29 is really a tax for 1927-28. How can it possibly be so? If a taxpayer had an income of, say, £6,000 for 1908-09 and only £3,000 for 1909-10, would the Revenue have allowed the taxpayer a similar argument? Would they have permitted him to claim that there was no super tax payable for 1909-10, as his income did not amount to £5,000? Of course they would not have done so, yet what is sauce for the taxpaying goose should also be sauce for the tax-levying Chancellor.

In my opinion there is no doubt whatsoever but that the present Chancellor has used the idea of simplification of the income tax as a pretext to introduce a new tax for which there was no authority. I am not a biassed politician, for I favour no particular party, but I do say that if righteousness exalteth a nation, then the present Prime Minister, regardless of consequences, should, for the maintenance of the honour of the nation as well as of the party to which he belongs, take immediate action for the recision of the sur tax proposals of his Chancellor and for the re-instatement of the existing super tax.

Yours, &c.,

London, G. O. PARSONS.
April, 1928.

SECRET RESERVES.

To the Editors *Incorporated Accountants' Journal.*

SIRS,—As a listener at Mr. Ashworth's excellent lecture on "Company Balance Sheets," I was struck by the uncertainty that appeared to exist among members of his audience on the subject of "Secret Reserves." Possibly the following observations will prove helpful to students and others interested in the subject:—

The auditor's position in regard to secret reserves is one of considerable difficulty, but inasmuch as he would be materially affected only in the case of public limited companies, there is no doubt that difficulties occur far more frequently in theory than in practice. However, there should be a theoretical method of approach to the subject which would suit the requirements of the practising accountant.

In the first place it is necessary to define what is meant by the term "secret reserves," and it may be stated that a secret reserve is one which will not be disclosed by a mere perusal of a detailed balance-sheet. Thus it may consist of undervaluation or omission of assets, or the overstatement of liabilities. Such items as patents and goodwill form fruitful sources for the provision of secret reserves. Liabilities may be overstated by the inclusion therein of excessive reserves for contingencies or bad debts, and while, strictly speaking, these must be regarded as secret, yet their presence on the balance-sheet will reveal to some extent to the person inspecting the same the degree of prudence exercised in its preparation.

A distinction ought to be recognised between secret reserves created artificially, such as the writing down of certain assets, or the charging to revenue of reserves or capital expenditure, and others created in the normal course of the company's existence by the increase in value of the company's assets, for example, freehold property.

A further distinction ought also to be recognised in the case of secret reserves created by resolution of the shareholders. This practice is a very common one, shareholders' meetings being invited to pass resolutions writing large sums off the company's property out of revenue. As at the time of the resolution full disclosure is made, the auditor should consider himself under no obligation whatever to report the existence of such Secret Reserves to subsequent meetings of shareholders.

Many objections have been, and can be raised to the practice of creating secret reserves, but the most important of these are undoubtedly the following:—

> (1) The amount of profit available for distribution by the company to its shareholders by way of dividend will be reduced.
>
> (2) Assets written down to low valuations or omitted altogether, might be lost sight of or might be disposed of and the true advantage and value thereof not accrue to the company.
>
> (3) The valuation of the shares on the Stock Exchange might be deflated and cause the shares to be the subject of manipulation by persons knowing the true position.

On the other hand the most important advantages may be said to be:—

(1) That the company is always in a better position than its accounts show.

(2) That in the event of trade depression the rate of dividend may be stabilised by drawing on these reserves in so far as they have been created out of, or represent profits.

In the course of his professional duties the auditor must endeavour to visualise the two sides to the question, and to find a true interpretation of the purpose for which it is proposed that secret reserves be created. He must remember that he is acting on behalf of the shareholders, and it cannot be too firmly borne in mind that the assets of a company are the property of its members. Therefore, although the auditor is not under any obligation to individual shareholders, he should endeavour to see that even a minority does not suffer in any way.

As to whether in a particular case large secret reserves are justified, the auditor must have regard to the foregoing. Thus, in the case of a company whose business is not subject to serious fluctuations, artificially created secret reserves are not at all necessary, and their existence is to be deprecated. The auditor should urge the company to build up strong non-secret reserves in order to encourage in its members, and others who have dealings with it, a confident feeling of strength and security. In a concern of this kind there is no doubt whatever that a shareholder or a member should be in full possession of the facts concerning the assets in which he has an interest.

In the case, however, of a company, the business of which is liable to large fluctuations from year to year, and where the dividend without any attempt at stabilisation would be expected to suffer great variations, the practice can be regarded with a certain amount of approval. It will undoubtedly be to the best advantage of the company and its members if a more or less uniform rate of dividend can be maintained. It is in such a case as this that the definition of the term "excessive" secret reserves presents very real difficulties. It is, therefore, suggested that the auditor should endeavour to visualise the effect of the full disclosure of all artificially created secret reserves. He must bear in mind that legally he audits the balance-sheet submitted to him by the directors and that its form largely rests with them. If the full disclosure would have the effect of increasing substantially the market valuation of the company's capital, or if it would permit the company to pay an unusually high rate of dividend or to make a bonus issue, then the secret reserve undoubtedly may be said to be excessive.

In conclusion, therefore, one might sum up as follows:—

(1) Where secret reserves have not been created, that is in cases where the value of an asset has risen above its cost price as shown in the books, or where secret reserves have, in fact, been created by resolution of the shareholders, there will be no need for the auditor to concern himself with the same and no mention need be made in the auditor's report.

(2) In the case of a company whose business is more or less stable, it is to the undoubted advantage of all concerned that full particulars as to reserves be disclosed. Where secret reserves of any extent whatever exist the auditor should make it his business to refer to the same in his report. The terms of his reference will vary in accordance with his own judgment as to the purpose for which the reserves are being created, but he should certainly say sufficient to arouse the interest of the shareholders in the matter. Unless the reserve would, if disclosed, have an effect on the rate of the dividend of more than 1 per cent. it would probably not be worth while the auditor calling attention to the matter. He should, however, be on his guard.

(3) In the case of companies whose profits are subject to large variations, heavy secret reserves may be said to be justifiable to an extent which bears comparison with the fluctuations in the profits of the company from year to year. Accordingly a secret reserve, equivalent to a 5 per cent. dividend or even more, might be passed by the auditor without comment if he is satisfied that it is created for the *bonâ fide* purpose of stabilising dividends.

Finally, the auditor must remember that he is acting on behalf of the shareholders, and that they are entitled to receive full rewards both as to income and capital. There is a danger of forgetting this latter point. Where there is, through ignorance of the position, any danger of the shareholders failing materially to receive their just rewards, the auditor would be justified in making a report of the circumstances, or drawing the attention of the members to the matter. In all cases the auditor will hesitate to report on such matters if he is perfectly satisfied that the directors are acting *bonâ fide* and in the best interests of the shareholders.

Yours, &c.,

LEONARD H. F. PINHORN.

New Hibernia Chambers,
London Bridge, London, S.E. 1.

Changes and Removals.

Mr. C. J. B. Andrews, Incorporated Accountant, has commenced public practice at 71A, Seamoor Road, Westbourne, Bournemouth.

Messrs. Henry Bradfield & Sons announce that their Nottingham offices have been removed from 13, St. Peter's Gate to Friary Chambers, Friar Lane.

Mr. F. Heywood, Incorporated Accountant, has removed to Cambridge Chambers, 16, Cambridge Street, Sheffield.

Mr. L. E. Stewart, Incorporated Accountant, announces that he has taken over the practice of Newton & Stewart at 55/57, Abington Street, Northampton, the partnership subsisting between himself and Mr. J. H. C. Newton now having been dissolved by mutual consent. Mr. L. E. Stewart will continue the practice in his own name at the above address.

Mr. T. A. Stoker, Incorporated Accountant, has removed to 71, Albion Street, Leeds.

Mr. R. H. Strutt, accountant and auditor, 31, Eastcombe Avenue, Charlton, London, S.E., has removed to Pearl Buildings, 77/79, Rushey Green, Catford, S.E.

Mr. James Summerskill has admitted into partnership his son, Mr. J. C. Summerskill, Incorporated Accountant. The practice will be carried on under the style of J. Summerskill & Son at 4, Palace Chambers, 21, Victoria Street, Liverpool.

Messrs. Whiteley Brothers have removed their Johannesburg office to 76/84, Beresford House.

South Wales & Monmouthshire District Society of Incorporated Accountants.

ANNUAL DINNER.

The annual dinner of the South Wales and Monmouthshire District Society of Incorporated Accountants and Auditors was held at the Whitehall Rooms, Park Hotel, Cardiff, on Thursday, April 19th, the PRESIDENT OF THE DISTRICT SOCIETY (Mr. J. Pearson Griffiths, F.S.A.A.), in the chair. The Chairman was supported by over 200 members and guests, including the Lord Mayor and Lady Mayoress of Cardiff (Alderman A. J. Howell, J.P., and Mrs. Howell), the Mayor of Newport (Councillor Frank Quick, J.P.), the Mayoress of Newport, His Honour Judge L. C. Thomas, Mr. Henry Morgan (Vice-President, Society of Incorporated Accountants and Auditors), Sir William Graham, Sir William Diamond, K.B.E., Mr. Lewis Lougher, M.P., Sir Thomas Hughes, Sir Illtyd Thomas, Mr. R. Wilson Bartlett (President, Newport Chamber of Commerce, and Mrs. Bartlett, Mr. E. Emmerson Davies (President, South Wales District Society of Chartered Accountants), Mr. A. W. Heard (President, British Association of Shipping and Forwarding Agents), Mr. A. R. Dawson, I.S.O., J.P., Mr. Hugh M. Ingledew, Mr. H. T. Jones (President, Cardiff Rotary Club), Mrs. J. Pearson Griffiths, Mr. T. B. Humphries (President, Cardiff Chamber of Commerce), Mr. Douglas Duncan, Mr. John Allcock (City Treasurer and Comptroller), and Mrs. Allcock, Rev. J. E. Phillips, B.D. (Headmaster, Christ's College, Brecon), Mr. Scott (Headmaster, Monmouth Grammar School), Lt.-Colonel Idwal Jones, T.D. (President, South Wales and Monmouthshire District Society Chartered Institute of Secretaries). Mr. E. Cassleton Elliott (Member of Council, Society of Incorporated Accountants), Mr. Walter Meacock, F.C.A. (President, Newport Rotary Club), Mr. Fred Perman (President, Cardiff Shipowners' Association), Dr. J. J. E. Biggs, J.P., Mr. John Rowland, C.B., C.B.E., M.V.O., Mr. G. Leighton Seager, Mr. J. R. W. Alexander, M.A., LL.B. (Parliamentary Secretary, Society of Incorporated Accountants), Mr. A. A. Garrett, B.A., B.Sc., F.C.I.S. (Secretary, Society of Incorporated Accountants), Mr. Percy H. Walker (Hon. Secretary, South Wales and Monmouthshire District Society of Incorporated Accountants), Mr. J. Paterson (Secretary, Scottish Branch, Society of Incorporated Accountants), Mr. A. E. Piggott (Hon. Secretary, Manchester District Society of Incorporated Accountants), and Mr. F. A. Webber (Hon. Secretary, West of England District Society of Incorporated Accountants).

Mr. E. MILLS, F.S.A.A., proposed the toast of "Our Civic Governors," and in doing so said he feared that they often failed to appreciate as fully as they might the great amount of work accomplished by those who served the public in the sphere of local government. In practically every city or town the largest undertaking was the management of its public affairs. The tendency of modern legislation had been to add very considerably to the work of public bodies. It was to be regretted that more interest was not taken in local government, for the policy of a council was often a vital factor in determining the development and prosperity of a town. All were affected by the question of rates, and at the present time, when England was fighting for her industrial life, the matter was of vital importance. Rates, unlike income tax, had to be paid whether profits were made or not. In 1914, rates amounted to £79,000,000, and in 1926 the total amount levied was £166,000,000, which was roughly equivalent to £3 15s. 10d. per head of the population. It must be realised that service had to be paid for, but they felt at the same time that economy, both public and private, was urgently needed. Not abstaining from spending—that might be the reverse of economy—but spending the last shilling in the pound to the greatest advantage. (Applause.) They all anticipated that the Chancellor of the Exchequer's promised method of dealing with rating reform would be of an epoch-making character.

The LORD MAYOR OF CARDIFF, in responding to the toast, said he felt he could not allow a stigma that had been cast by one of his colleagues to pass without some comment from him as Chief Magistrate of the city. That gentlemen had told the Cardiff Chamber of Commerce that Cardiff owed eight millions of money. They were tired of hearing it, but what had they got for the eight millions? He challenged any city in the country to show better results for the money that had been spent. He asked every professional man in Cardiff where they would be, and where would the traders be, had it not been for the actions of those gentlemen responsible for the present Cardiff, who were described as "sitting in armchairs"? What did the eight millions of money represent? Two millions were for houses. The Government forced them, and rightly forced them, to provide certain accommodation for the people. The wealth of the country was not altogether in gold or notes, but in flesh and blood, and it was the duty of the country to house its people. Would this colleague and friend of his dare to say on a public platform that they ought not to have spent those two millions? He dared not say it on a public platform. Those two millions had been well spent and had provided labour for a number of people, who had spent their money among the tradesmen of the city. Then, again, there was the question of water. He (the Lord Mayor) had no doubt they could have got water without the waterworks. They could have sunk wells, and his hearers would then have had something to do in their spare time. (Laughter.) The health services were an exceedingly important matter. The Western sewer was responsible for a quarter-of-a-million of money. Roads were responsible for another two millions. On the tramways the debt at present was £495,000, and on the electricity service £580,000—say, a million. During the last eight years these services generally had contributed to the rates of the city a quarter-of-a-million. Was not that money well spent? There was a credit as well as a debit side. The question was whether they had got for the money spent a reasonable return. He had heard it said that Roath Park cost the town an enormous sum of money and that Lord Bute, in his generosity, gave them nothing. It was nothing of the sort. It had provided a very beautiful park, a wonderful lake, and, beyond that, much wanted land for the builders. No town could stand still. Towns, like businesses, had got to go onwards or backwards, and they were not doing their duty as governors if they did not do as their forbears did—look ahead, and try to make the town better in the future than it now was. He would ask them in all seriousness to try to visualise the future of Cardiff. Realising that the traffic of the country had increased 100 per cent. during the last five years, they should try to visualise what the next ten or fifteen years would bring forth. In Cardiff they were using roads of the same width as 70 years ago. Was it not in the interests of the city that money should be spent to develop the central area. One way in which the rates of Cardiff could be reduced was by creating fresh assessments, not by increasing the present ones, which were already high enough. If they could provide new avenues within the city and make it the finest shopping centre this side of Bristol and Merioneth, then Cardiff would be able to lower its rates. There were many towns which were willing

to give facilities to firms in the matter of free ground rent, free water and free rates for so many years, and he would say in all seriousness that they would never get manufacturing firms to come to Cardiff unless they offered them better facilities than any other city in the country.

The MAYOR OF NEWPORT, who also responded, said local governors certainly rendered a great service to the public, but the alderman or councillor who thought that he alone governed, without consideration of the work of the officials, must be a perfect fool. Policy might be enunciated by certain people, but it must certainly have the whole-hearted support of the permanent officials, otherwise it would be still born. In the administration of various departments of civic government a good deal of elasticity was shown. There were not hard and fast rules in the administration of public health, the engineers' department, or even the police, but when they came to the accountant's department they happened upon a confounded nuisance. (Laughter.) When the reports of the treasurer's department said that a certain matter was so, well, it was so, and there was no elasticity about it all. And when members of societies such as were represented there that night set their names to anything, it meant, in effect, that that was the truth. Whether good, bad or indifferent, it was the truth, and nobody could gainsay it. There was too much talk about bringing down the rates. What they wanted was common sense in the spending of the rates, for with that there would be no need to talk about economy. Certain essentials were due to the general community because of the conditions under which they were living. It was a good augury that the various councils were not made up of the same class of people. There were doctors and lawyers, company promoters, employers, and poor ignorant labourers like himself. He would say that even the Labour people had justified their existence, because they had criticised, constructively for the most part, and had kept other people up to scratch. The Labour people would not grumble if they could set the pace upon which the civic bodies ought to govern. In Newport they hoped in the near future to institute a new system of accountancy—a system which had been accepted by the Ministry of Health and would be adopted generally throughout the country when it had been proved to be a success, and it was bound to be that because their officials had formulated it. Incidentally, although their collections of accounts had increased by over 300 per cent. since the war the present staff was less than it was in pre-war days.

Judge L. C. THOMAS, in proposing the toast of "The Society of Incorporated Accountants and Auditors," said that, as a person with little Latin and less Greek and an almost total ignorance of mathematics, he had always stood in awe of qualified accountants. He classed them with headmasters, of whom he stood in similar awe. But he was glad to see present the Headmasters of two famous schools, one of whom, Mr. Scott, was the new headmaster of Monmouth Grammar School. His knowledge of accountants was rather greater than his knowledge of accounts, because he well remembered that when leaving school various schoolfellows of his were about to enter that great profession, and there used to be a standing argument as to which of the two great bodies was looked to as representing all that was best in the science of accountancy. The Chartered Accountants or the Incorporated Accountants—which of these two was the superior? He had never yet discovered the answer to that question, but he was inclined to take the position of the negro prisoner who, when asked by the Judge if he would like to take his place in the witness chair, said: "I guess, Judge, I will remain neutral." That, said His Honour, was his attitude towards the great profession of accountancy. His particular knowledge of them was derived from the balance-sheets of companies in which he was interested. What he usually found was that after having written off a large sum of money for goodwill, and after having depicted the glowing prospects, the directors resolved that the total earnings of the company should be passed to the reserve. That report was usually signed by a firm of accountants, who retired by rotation, but being eligible offered themselves for re-election. He thought the profession of accountancy had made great strides, and had so established and ordered itself that every qualified accountant could be thoroughly trusted not only by the people who employed them but by every member of the public. The great growth of joint stock companies and the incidence of income tax rendered the service of qualified accountants more and more necessary as time went on. The accountancy profession stood to-day in a very strong position. They safeguarded the interests of the public by prescribing for candidates substantial professional experience, together with the most stringent examination. They had acquired a reputation for that high honour and integrity which was the basis of every profession. There would be nothing in a profession unless every member of it had that feeling of pride that he was a member of it. This could only be done by joining together in a big society for the general government of the profession, subject only to some breaking away to a very limited extent in the districts.

Mr. HENRY MORGAN, Vice-President of the Society of Incorporated Accountants and Auditors, who responded to the toast, expressed on behalf of the President his regret at being unable to be present owing to his absence in the Mediterranean, where he was taking a well-earned holiday. However, their loss was his (Mr. Morgan's) gain, because it gave him the opportunity to represent the President as the guest of his own countrymen, in his own country. They had drunk to the health of the Society of Incorporated Accountants, the Vice-President continued. Its health had not been impaired by the recent refusal of the House of Lords to include the qualifications of the members of the Central Association of Accountants, Limited, in the municipal audit clause of the Bill of the Gloucester Corporation, and so maintaining the provisions in the Acts of municipal corporations by which the standard of audit is that of Chartered and Incorporated Accountants. The abnormal conditions after the war, such as the depreciation and violent fluctuations of foreign currencies, the change over of the greater part of our industries from war to peace conditions, the many serious labour difficulties, and others that would readily occur to everyone of them, were passing away, and the commercial outlook at the present time showed gratifying signs of improvement, and, indeed, prosperity. There were, however, some features which were viewed with some anxiety and disquietude by many well-informed financial authorities and men of wide business experience. They were well aware of the waves of mad speculation to which the United States of America were subject every now and then, and in our own country we had had from time to time boom periods during which there was great speculative activity, and prices of stocks and shares were forced up to very high levels. It must, however, be admitted that never before in this country had we witnessed such enormous speculative activity, not only in stocks and shares, but also in raw commodities, such as rubber, as had occurred during the last year, and which was continuing unabated at the present time. This craze for speculation had extended to practically every

section of the community, and there was a very large class of people to-day, including a large number of the opposite sex, dealing in stocks and shares, rubber and such like, who had never before had experience in these classes of business. Many sensational features associated with an American boom were observable. He had heard of cases where women had sold their jewellery in order to speculate on the Stock Exchange, and of several instances where men of quite moderate means had in the course of a few days found themselves comparatively well off as a result of a sudden jump in the price of some shares which they had been advised to buy. Many of these people did not, in fact they could not, discriminate between what is sound and what is not. They acted on so-called "tips" which were circulated by people to induce them to buy at a high price shares which they wanted to sell. A run of good luck caused them to speculate to an extent far in excess of what they were justified in doing. They did not recognise that their profits were largely on paper, and were subject to their being able ultimately to get out. They did not realise that in the case of shares where there is little merit to justify the enormous prices to which they had risen, and in which frequently the less experienced speculator was most heavily involved, when there was a break in the market, as was bound to occur sooner or later, it would not be the case that their shares might have to be sold at a substantial loss, but that such shares might be practically unrealisable at any price. This was the time when the share-pushers and the not over scrupulous company promoters got their opportunities of loading the general public with large numbers of shares, with enormous profits to themselves. Recent issues offered to the public had been largely over-subscribed, and it must be obvious to anyone with experience that the disclosed position and past profits could not justify the extravagant figures at which these companies were capitalised, and certainly not the extravagant premiums at which the shares were dealt in on the Stock Exchange. In the case of some shares where the rise had been most sensational the actual merits could not justify even a small fraction of the market quotation. It was interesting to reflect upon the causes which may tend to bring about this excessive speculation. In his humble opinion, one of the principal causes was our present system of taxation, which was bound to have a demoralising and discouraging effect upon business men, and especially those with capital to invest. Apart from the man (or woman) who was always attracted by the prospect of making money without working, and at the same time avoiding income tax, there was the case of a man who was moderately well off, who had a fair amount of unearned income, and was contemplating putting his capital into a business where his services would be utilised. If the business is profitable, the Government took by way of income and super tax from 30 per cent. to 50 per cent. of his earnings and share of profits. If, on the other hand, the business resulted in a loss, the Government bore no part of it. Was it to be wondered at that business men hesitated to risk their capital in a business venture, but were attracted rather by the prospect of appreciation of an investment, or a profitable speculation, which would be free from taxation and involved but little work or energy? This attitude was far more widespread than is generally imagined. It was when conditions prevail such as at present, when there was such an exceptional increase in the interest taken by the investing community in the shares of public companies, that it was especially important that directors of companies, professional accountants and the Press should recognise and pay strict regard to their obligations. There was, in Mr. Morgan's opinion, a disposition in some quarters to overlook the fact that the enjoyment of privileges always carried with it obligation and responsibility. Directors of public companies were privileged to have entrusted to them by shareholders enormous sums of money. They were frequently remunerated on a scale which aroused the envy of the professional accountant, having regard to the amount of time actually involved in carrying out their duties. Directors were also in a very powerful and almost unassailable position in relation to a company, at any rate, so long as dissension did not arise on the board. On the other hand, although in theory the appointment of directors and auditors was in the hands of the general body of shareholders in general meeting, the actual power of shareholders to influence these matters was practically negligible. In view of this it was to the credit of this country that in the case of the large majority of public companies the obligations of directors to their shareholders were fully recognised and discharged. There were a comparatively few cases, however, where shareholders had thoroughly good cause for dissatisfaction with the accounts and information which was disclosed to them. The principle of the trust and subsidiary company could, if properly applied, possess very great advantages. At the same time it was open to very grave abuses because it could be, and frequently was, utilised to conceal information to which shareholders were properly entitled, such as losses incurred in subsidiary undertakings, particulars of assets and liabilities of subsidiary companies and remuneration paid to directors and officials by way of fees from subsidiary and controlled companies. Mr. Morgan maintained that shareholders of a company were entitled to expect from their board, in the first place, a full and true balance-sheet which would show, in a manner understandable by the average shareholder, the position of the company in which their money was invested, and, in the second place, a profit and loss account which, whilst not disclosing inside information which might be of value to competitors, would show how the profit for any year had been arrived at, and discriminating between the direct and real trading profits of the business and profits of an exceptional or transitory character, such as appreciation of capital assets realised, dividends from investments, or rents of properties not occupied for the purposes of the business. The Companies Bill now in Committee in the House of Commons included provisions intended to remedy these defects as regards balance-sheets and profit and loss accounts, but, in the Vice-President's view, these provisions fell far short of what was necessary for the proper protection of the investor. The Press wielded enormous power in connection with financial matters because it was the principal medium for the advertisement of prospectuses and reports of meetings and for the dissemination of other information which directors of companies desired to circulate. The power of the Press, great as it was, tended to increase, and the extent of this power must be regarded as the measure of its responsibility. There was one feature of present-day journalism to which reference must be made, and that was the increasing tendency on the part of financial editors to recommend the purchase of certain shares, and from time to time to comment that a rise in prices was evidence of the soundness of the advice which they had given. But it must be obvious that the advice to purchase given by any of our great newspapers, with hundreds of thousands, possibly millions, of readers, must inevitably have the effect of inducing big purchases of the shares in question, and such purchases must bring about the very result prognosticated by the Press. There were a number of people who were sufficiently astute to realise what must be the effect of advice broadcast in this way. Knowledge of the opportunity to obtain a profit by the artificial rise thus brought about must extend, and the effect would become still more marked, and the question arose as to where this might ultimately lead. One of the greatest safeguards for shareholders in public

companies was the obligation upon directors to issue annual balance-sheets and profit and loss accounts, and this safeguard derived its strength chiefly from the fact that accounts were audited and balance-sheets certified by Chartered or Incorporated Accountants, for we knew that public companies whose auditors did not belong to one of these two bodies was so very few in number as to be practically negligible. In the interests of the investor, however, Mr. Morgan considered that the new Companies Bill should not only extend the power of the auditor, but should also provide some security of tenure of his office in the event of his views being in conflict with those of the directors.

The President and the Council had recognised the important part that was played by the Branches and District Societies throughout Great Britain and Ireland in the development of the Society of Incorporated Accountants, and to the speaker it was a matter of great personal satisfaction that in Cardiff, the greatest commercial centre in his native country, there should be one of the strongest and most progressive District Societies, and that it should be directed by officers who were working wholeheartedly to promote the interests of the profession and to fulfil the destiny of their own Society. Mr. Morgan concluded by saying to Mr. Percy H. Walker, whom he described as their indefatigable secretary and the champion of the South Wales District Society when he visited headquarters in London. For the very many years during which he (Mr. Walker) had been Secretary he had done splendid work, not only for their District Society, but for the Parent Society. In expressing his (Mr. Morgan's) personal appreciation of the services Mr. Walker had rendered, he was voicing the opinion, not only of the members of the South Wales District Society, but also of the Council of the Parent Society. This very successful function to-night was a worthy termination of the secretaryship which he was about to resign.

The Vice-President then presented a number of Honours Certificates and Prizes.

The CHAIRMAN submitted the toast of "Trade, Commerce and Industry." Having made a brief but interesting reference to the romance historically associated with commerce, Mr. Pearson Griffiths drew attention to the fact that during the present year there had been a decided improvement in the position of South Wales industries. Since the beginning of the year the volume of coal exports had increased by over 10 per cent. as compared with an increase for the United Kingdom of 5 per cent. The Bristol Channel ports to-day claimed about 45 per cent. of the total coal exports of Great Britain, as compared with 40 per cent. in 1913. But the improvement in the iron and steel industry had been even more striking. The export of tin plates and sheets in January was 35,000 tons, in February 44,000 tons, and in March nearly 52,000 tons, and in the same period the export of galvanised sheets from the United Kingdom had increased from 46,500 tons to 72,100 tons. Taking the country as a whole the iron and steel exports in March totalled 410,000 tons, as compared with 317,000 tons in February and 332,000 tons in January. The volume of the export trade of the United Kingdom in March was within 10,000 tons of the monthly average in 1913, but the shipment of tinplates in March was about 25 per cent. greater than the monthly average in 1913, and those of galvanised sheets over 30 per cent. more. Another important factor was that the downward tendency of coal export prices had been arrested with every indication that from now on the movement would be gradually upwards. But there were still many difficulties to overcome. There was the burden that has been thrown on the coal trade by the increase in transport costs. For instance, since 1913 there had been an increase in the railway rates from shipments of coal of 9d. per ton, and in direct shipment charges 6½d. per ton, a total of 1s. 3½d., which was an increase of nearly 100 per cent. per ton. This increase, calculated on the disposable coal available in 1927, was equivalent to nearly £3,000,000. In addition, new charges had been added since the war, and it was submitted to the Government a few weeks since by South Wales coalowners that direct increases in post war charges were estimated to amount to not less than £3,500,000, and indirect charges to a further £500,000, a total of £4,000,000 in all. Then there was the burden of rating. The amount paid in coal rates in the South Wales coalfield in 1913 was under £500,000, whereas in 1925, on the same tonnage, the amount was nearly £1,300,000, or approaching an increase of 200 per cent. In some areas the increase had been actually over 300 per cent. He sincerely trusted that the Chancellor of the Exchequer in propounding his Budget would do something towards easing the rating burden that is being carried by trade and industry at present and which was sadly hampering the fight to regain lost markets.

Mr. LEWIS LOUGHER, M.P., in responding to the toast, said that the country still had the incubus of unemployment, and there was practically a million unemployed workers. This was a serious position, but there were mitigating circumstances. Since the war the population of the country had increased by over four millions, notwithstanding the very grievous losses of the war. If there had not been this increase in the population, and if the trade of the country had remained as it was to-day, they would not be faced with the problem of unemployment but with the still more serious problem of a shortage of labour. This was illustrated in the case of France, where they had to resort to imported labour to carry out the work of their country. In Great Britain new industries had sprung up all over the country, and, as a matter of fact, there were many thousands of persons being employed to-day in excess of the number that were employed in pre-war years. Although we were holding our own, however, we were not advancing at the same rate as some competing countries. While the coal trade was bad throughout the whole country, it was more acute in South Wales than in any other district owing to the great dependence of South Wales on overseas trade. The shipments foreign constituted 72 per cent. of the disposable output of the South Wales coalfield. Notwithstanding the competition of oil fuel, electric and hydro-electric energy, more coal was now being consumed in the world than ever, and the latest statistics showed that every coal producing country, with the exception of our own, was to-day producing more coal than in 1913. There were 18,000,000 tons more coal produced by the chief coal producing countries of the world in 1927 than in 1913. The United Kingdom, which possessed the finest coal in the world, was the only country which showed a decrease in production, the output last year being 32,000,000 tons less than in 1913. This shortage practically represented our extra unemployment. The question arose: how could we regain our lost export trade in the face of increasing developments and competition from other countries? Coal owners and workers had striven successfully to reduce the cost of production to within a very small margin of what is was in 1913, and a great sacrifice had been made by both owners and workmen in order to resuscitate the trade. The men were working longer hours at reduced wages, and the credit which was their due should be given them. Yet the trade loss of South Wales last year exceeded two millions sterling. Further, railway charges were 94 per cent. above those of 1914, and they had a great influence upon the coal trade. It was a question whether the coal trade should be made to bear this burden in order that a more sheltered and protected industry should be further buttressed. Nearly every

foreign coal producing country assisted its coal trade by granting concessions on the railway rates, and Mr. Lougher thought it was not too much to suggest that our own Government should take similar steps to prevent the coal trade from drifting to disaster. The coal trade was the basis of very many important ancillary industries, such as iron, steel, shipping, ship repairing, and others, and when the coal trade was put on its feet again those other industries would be quickly restored to a position of prosperity.

Sir WILLIAM DIAMOND, who also responded, said that he was impressed by the way the Chairman had approached the subject of trade, commerce and industry through the path of romance. Romance was undoubtedly associated with sentiment, which was sometimes spoken of with contempt, though it was one of the finest emotions of the human heart. Sentiment always caused one to look up. It inspired confidence, and if sentiment could be associated with business it would certainly be to its advantage.

Mr. R. WILSON BARTLETT proposed the toast of "The Visitors," coupling with it the name of Sir WILLIAM GRAHAM, J.P., who, in responding, said that they would find written in the Bible that there was a time to dance, a time to sing, a time to laugh, and a time to cry, but he felt sure all would agree that at such a late hour it was no time to make another speech, and for the sake of the gathering he would refrain, contenting himself with thanking them on behalf of the visitors for the generous hospitality that had been extended to them.

MISFEASANCE SUMMONS AGAINST A LIQUIDATOR.

Lambert *v.* March.

The affairs of the Windsor Steam Coal Company (1901), Limited, were discussed in the Chancery Division last week, when a misfeasance summons under the Companies Act was considered by Mr. Justice Maugham, who heard a claim made by Mr. Francis Henry Lambert, of Westhouse, Penarth, one of the shareholders, against Mr. Richard Henry March, Chartered Accountant, Mount Stuart Square, Cardiff, the liquidator of the company.

Mr. Lambert contended that the payment in July, 1926, of £15,000 by Mr. March as liquidator to the three partners in Messrs. George Insole & Son, selling agents of the company, was a misapplication of the company's money, and that in entering into this compromise the respondent was guilty of a misfeasance and breach of trust. The £15,000 was paid by the liquidator by way of compensation and damages in respect of the determination of an agreement between the company and Messrs. George Insole & Son as selling agents of the company's coal. It was stated that no charges of fraud or dishonesty were made against Mr. March, who denied the allegations made against him.

Mr. Gavin Simonds, K.C., and Mr. Lionel Cohen, instructed by Messrs. Churchill, Clapham & Co., Broad Street Place, London, E.C., agents for Messrs. Elfyn, David & Hamblen, of Cardiff, were for the applicant, and Mr. A. F. Topham, K.C., and Mr. Gibson, instructed by Messrs. Ingledew, Sons & Brown, of Great St. Helens, London, E.C., agents for Mr. Butterworth, of Messrs. Downing & Hancock, of Cardiff, were for the respondent.

Mr. Justice Maugham, in the course of his judgment in favour of the applicant, traced the history of the Windsor Company, and said nobody would suggest that the statements made in the circular sent to the shareholders and the statements at a meeting of the company on June 5th, 1925, were anything but a true and accurate account of the position of the company. It was apparent that the company was, humanly speaking, unable to carry on and was compelled in effect either to go into liquidation or to take the step of selling its undertaking to a much more wealthy and powerful concern, a concern which no doubt bought the undertaking not because of its present prospects, but because of its future prospects if the condition of the industry should mend. He was perfectly satisfied that the chairman's view was right, and in effect it was impossible to raise money for the purpose, having regard to two factors. The first factor was the large amount of debentures outstanding, and the second factor was that the loss was increasing at the rate of about £1,300 per week. There could be no question, therefore, that in taking the course it did of selling its undertaking, the company adopted the prudent and proper course to be taken in the interests of the creditors.

The question arose as to how far, if at all, the firm of agents, two of whom were directors of the company, had got any right to prove in the liquidation of the company, when after the sale the liquidation took place. It was, in his opinion, impossible to draw the inference that the company was bound to raise a certain number of tons of coal per annum during the continuance of the agreement with the agency, and it was quite apparent that the company was unable to give a pledge as to the quantum of tonnage it would raise year by year or in any year. Having regard to all the chances of mining it was true to say that the company would have scouted the notion of entering into an agency agreement in which they were under any obligation to do anything more than to sell to the agents such coal as they should raise, or to raise a ton more coal than they thought it was wise to raise. In his opinion the firm of agents were not entitled to prove in the liquidation of the company for any sum whatsoever. The case might go farther, and accordingly it was right that he should say that if he were wrong in that view he should still come to the conclusion that the sum of £15,000, which the liquidator paid to the agents, was very much in excess of any sum which could properly have been claimed if they were to assume that the claim was based upon the reasonable amount of loss which the firm of agents had suffered by a repudiation of the agency agreement. Having regard to the known facts with regard to the company, and to the obvious difficulty the company had in carrying on its occupations, quite apart from the sale, it was difficult to see how the liquidator could properly have paid a sum more than about one-fifth of the sum to which he agreed. In his judgment, therefore, the liquidator was wrong in paying £15,000.

It was an unpleasant duty to be bound to say that Mr. March acted rashly in accepting the view of the solicitors to some other person in such a matter as the present. If a liquidator paid away a large sum, part of the assets of the company, to somebody who had no claim to it he was afraid that the Court had no option but to say *prima facie* that he had paid away a sum which he should not have paid away, and that he should restore it. It was contended in defence that the Trustee Act applied to a liquidator in such a case, but in his view he was not entitled to protect himself under the section of the Act which had been argued in defence if he paid away the moneys of the company by mistake, even though it was (as it was in this case) an honest mistake, to somebody who was not entitled to it. Accordingly he thought it was his duty to make an order on the summons. The order must be that the respondent must repay the £15,000 with interest from the date of payment.

His Lordship thereupon made an order against the respondent with costs, and said the interest would be at the rate of 5 per cent.

YOUNG MEN'S CHRISTIAN ASSOCIATION.

Special Appeal to Incorporated Accountants.

The following letter has been sent by the President, Mr. Thomas Keens, to the members of the Society in the United Kingdom:—

"At their last meeting, the Council had before them a statement by Sir Arthur Yapp, K.B.E., as to the financial position and the programme of work of the Young Men's Christian Association. In view of the situation therein revealed an informal committee was formed and I was empowered, with the wholehearted approval and support of the Council, to issue an appeal on behalf of the National Work of the Y.M.C.A.

"We appreciate the great value of the Association's steady influence for good on the youth throughout the country; we gratefully recall its splendid War work, and we realise the importance of its present emergency service with British Troops in Shanghai, Iraq, and on the Rhine and elsewhere.

"I am sure that you will wish generously to support this appeal, and I am confident that the result of this effort amongst Incorporated Accountants will be such as to relieve to some extent the financial anxiety of the Y.M.C.A., and to encourage those discharging its commendable work.

"Cheques should be made payable to 'Incorporated Accountants' Y.M.C.A. Fund,' and sent to the Honorary Treasurer at 50, Gresham Street, E.C. 2.

"Yours faithfully,
"THOMAS KEENS,
"*President*,
"The Society of Incorporated Accountants and Auditors."

The letter was accompanied by the following appeal to Incorporated Accountants by Sir Arthur K. Yapp:—

"During the war you gave ample evidence, by your generous contributions of time and money, that the work of the Y.M.C.A. had your sympathy. This work is being continued to-day amongst His Majesty's Forces in Shanghai, Iraq, Germany, Malta and Gibraltar, and in the great military centres at home.

"These exceptional services, the cause of financial concern to the National Council of the Y.M.C.A., are in addition to its usual extensive work carried out at home in 200 Red Triangle Clubs, where 30,000 boys are being trained, and in 700 Y.M.C.A. centres, where young manhood is being developed. Thirty Y.M.C.A. Secretaries are working amongst British men abroad, whilst in London alone employment has been found for no less than 38,000 ex-Service men.

"We feel that we ought not to contemplate the serious curtailment of this work without first making special efforts to secure the funds necessary to help us through this emergency. The Association is dependent upon the goodwill of the public for practically the whole of the £70,000 needed to meet its expenditure for the current year, and there is now an accumulated deficit of £37,000.

"This national work, as important in times of peace as during war, will be appreciated by you, as it has been appreciated recently by the big banks, the London Stock Exchange and the City of London Corporation, who have given liberally to our cause.

"I appeal, therefore, to Incorporated Accountants everywhere to help us with their contributions at this difficult time.

"Very truly yours,
"ARTHUR K. YAPP,
"*Secretary*,
"National Council of Y.M.C.A."

The Appeal Committee consists of Mr. Thomas Keens (*Chairman*), Mr. Henry J. Burgess, Mr. Henry Morgan, Mr. C. Hewetson Nelson, J.P., Mr. G. Stanhope Pitt, Mr. William H. Payne and Mr. Alexander A. Garrett.

The Honorary Treasurer is Mr. G. Stanhope Pitt, F.S.A.A., to whom donations should be sent, at 50, Gresham Street, E.C. 2., and the Honorary Secretary is Mr. J. R W. Alexander, M.A., LL.B.

CHARTERED INSTITUTE OF SECRETARIES

Country Conference.

The country conference this year is to be held at Cardiff. It will open with a reception and dance in the City Hall (by the kind invitation of the Lord Mayor) on Wednesday evening, May 9th. On Thursday, May 10th, and Friday, May 11th, there will be business meetings, a dinner and other functions as detailed below. The business meetings will be held at the City Hall (by the kind permission of the Lord Mayor and Corporation).

The papers to be read at the business meetings will be one by Mr. W. H. Stentiford (Past President and member of the Institute Council) on "The Company Law Amendment Bill." The other will be by Mr. P. Lloyd Tanner (member of the Institute Council and Secretary of Spillers, Limited), providing a general survey of the changes in the chief trades of the country as a result of the war.

On Wednesday evening, May 9th, a reception and dance will be held at 8 p.m. in the City Hall. On Thursday, May 10th, the formal proceedings will be opened at 10.30 a.m. at the City Hall, under the chairmanship of the President of the Institute (Brigadier-General Arthur Maxwell, C.B., C.M.G.), with a civic welcome from the Lord Mayor (Alderman A. J. Howell). A business paper will then be read, and will be followed by a discussion.

During the morning the lady visitors will be conducted over Cardiff Castle, and at 2 p.m. a visit will be made to the Queen Alexandra, Roath and Bute Docks (at the invitation of the Great Western Railway Company).

In the evening the conference dinner will take place at the City Hall. The President of the Institute will preside, supported by the President of the Branch, Mr. Lewis Lougher, M.P., and the Lord Mayor; the company will include distinguished leaders in the civic, business and professional life of the district.

On Friday, May 11th, the business of the conference will resume at 10.30 a.m. with a paper, which will be followed by a discussion.

During the morning the lady visitors will be shown over the Museum and Art Gallery. In the afternoon arrangements have been made for a drive to Brecon Beacons to inspect the arrangements for Cardiff's water supply.

"Life's a game of double entry.
Ev'rything we do or say,
Good in work or good in play,
Scarcely have we done or said it
Than it's posted to our credit.
Anything by us omitted
On the contra side is pitted."

—*Ballad by the Bursar.*

The Law of Insurance.

A LECTURE delivered before the Incorporated Accountants' Students' Society of London by

MR. GILBERT STONE, B.A., LL.B.

The chair was occupied by Mr. W. H. GRAINGER, Incorporated Accountant, Controller and Accountant of the Prudential Assurance Company, Limited.

MR. STONE said: I have come here to-night without a written lecture because I find that when you read a thing it is much less easy to explain points and put the stress on the right words than if one speaks from one's mind and without looking at a document. What I have before me here is merely a précis of the speech I am going to make to-night, and I will try and keep to it closely.

May I by way of further preliminary remark say that, in considering what I should speak about to-night, I had in mind the fact that many of you are students, and the subject of insurance is only one of a vast number of subjects you have to know; therefore I thought it would be most useful if I dealt with the general principles in a form that would be useful when you are considering contracts other than insurance contracts.

All contracts, as doubtless you are aware, are concluded when you have two parties who are *ad idem*—that is to say, who both mean the same thing, the one party having made an offer which the other party has accepted. In certain circumstances and in certain kinds of contracts you cannot have a binding contract made orally; you have to have it in a particular form, sometimes by deed, sometimes in writing, and in vast numbers of cases you may have it made orally. Now, contrary to the opinion of many, insurance falls within the third category, with certain important exceptions; that is to say, the contract of insurance can be concluded and made binding orally. There are two principal exceptions to that proposition. One is that under the Marine Insurance Act, 1906, in the case of marine policies of insurance, it is necessary for them to be in writing; and in the case of guarantee insurance, *e.g.*, insurance by way of fidelity guarantee, it is necessary under the Statute of Frauds for that contract also to be in writing.

But when I say the contract of insurance need not be in writing, do not misunderstand me; I am talking simply and solely from the point of view of the law of contract. When, however, you come to regard the matter from the point of view of the Stamp Acts, you find that the Stamp Act of 1891, and subsequent Finance Acts, require the office that makes the contract of insurance to issue a stamped policy within one month, under severe penalties. Consequently you nearly always find, when you have an insurance contract, that it is closely followed up by an insurance policy.

The next thing I want to point out to you is that a contract of insurance is a contract which normally is unlawful unless the person insuring has an insurable interest in the subject matter of the insurance. And now I must burden your memories with one or two Acts.

The common law permitted anybody to gamble as much as he liked, to bet as much as he liked, and to insure as much as he liked, but the Legislature in its wisdom came to the conclusion that a good many ships were being sent to sea in an unseaworthy condition because the owners were desirous of getting the money for the insurance which they had effected. An Act was, therefore, passed in the first half of the 18th century, which prevented insurance on ships unless the person insuring the ship had an interest in the ship insured.

Next there comes the Gambling Act of 1774, which required an interest, in the case of other risks, for a valid insurance of those risks to be effected, but excepted from that general provision insurance on "ships, goods and merchandises." It is probable that the draughtsman of that Act, when he excepted "ships, goods and merchandises," meant "ships, goods and merchandises therein," and was merely excepting what was already included in the earlier Marine Act. But he did not use the word "therein," and consequently it was held that ships were excluded that fall within the earlier Act, but goods and merchandises were excluded that did not fall within the earlier Act. So in the case of land risks on goods and merchandises you need have no insurable interest. Your contract of insurance in these cases is perfectly good and lawful so far as the Act of 1774 is concerned although you have no interest in the subject matter. That point was decided quite recently in the case of motor cars—I refer to *Williams* v. *The Baltic Insurance Association of London* (1924) (2 K.B., 282). It must be noted, however, that a contract, whether insurance or otherwise, that is a pure gamble may be contrary to the provisions of the Gaming Act.

The third general principle I want to draw your attention to, with regard to contracts generally and insurance contracts in particular, is this: No contract is binding—or, rather, any contract can be avoided—that has been induced by fraud of, or by the misrepresentation of a material fact by, the other side. If A induces B to contract with A by making misrepresentations of fact, or, *a fortiori*, if he is fraudulent—that is to say if his representations are known to him to be misrepresentations, or are made recklessly not caring whether true or false—then B can avoid the contract. In addition, he has a right to sue the fraudulent person in tort for damages for deceit. That is common to all kinds of contracts, but in the case of insurance one goes further because the contract of insurance is what is known as a contract of the highest faith, and you can avoid it, although there has been no misrepresentation of fact and no fraud, if the other side has withheld or failed to disclose facts which are material to the risk. That is known as the doctrine of non-disclosure. If there is a non-disclosure of a material fact before the time the contract is made, that non-disclosure entitles the office or the assured to refuse to be bound by, *i.e.*, to avoid, the resulting contract But in these cases of fraud, or misrepresentation, or non-disclosure, the thing that you are relying upon, the misrepresentation you are relying upon, the non-disclosure you are relying upon, must have happened before the contract was concluded. After the contract is concluded non-disclosure does not affect the validity of the contract.

When you come to consider when a contract is concluded you will be surprised what difficulties there are. Many people think a contract of insurance is concluded when the insurance policy is issued. That is not the critical date; the critical date is when an offer has been accepted. Further, a contract of insurance does not have the same date often as the commencement of the risk. As a rule the contract for insurance synchronises with the acceptance of the risk, but the commencement of the risk as a rule synchronises with the first payment of the first premium, and it has been held that where there is such a clause in a contract of insurance there is no insurance within the meaning of an exception clause excluding other insurances until the premium is paid (*Equitable* v. *The Ching Wo Hong* (1907), A.C., 96).

The next great point to remember in the law relating to insurance is that insurance is in essence a contract of indemnity in most cases; that is to say, whatever you insure for, however much premium you pay, you cannot recover more than you have lost. You can assign a value, of course,

and the assignment of the value may estop the other side from showing that you have not lost what you are claiming. But, apart from that, although you may insure a thing for £10,000 and pay premiums on that basis, if in truth and fact the thing is only worth £5,000 you can only recover £5,000, because the contract of insurance is a contract of indemnity, and the most you can get is the total you have lost.

There are two very important exceptions to that rule: one is the case of life policies and the other is the case of accident policies. That life policies are an exception is quite clear, because a man's life is a thing that cannot be assessed in terms of money. You make your bargain on the footing of so much in such an event, and when the event befalls you get the amount you have contracted to receive, and of course you pay premiums on that footing also.

The contract of insurance being fundamentally a contract of indemnity, the consequences follow that always do follow where A indemnifies B and satisfies B's indemnity. The most important of these consequences is a right which makes it necessary to consider the doctrine of subrogation. The doctrine of subrogation is not special to insurance. As you know, an infant cannot be held to his contracts except in certain special cases, one of which is that if goods are supplied to him for necessaries, he can be made to pay for those necessaries. Now, if an infant buys necessaries from B and he borrows money from a moneylender to pay B, the moneylender is subrogated to the infant's rights and can sue. I give you that to show you that, even in such a contract as moneylending—which is, I suppose, the lowest of all forms of contract—the principle of subrogation, which is an equitable doctrine based entirely on the satisfaction of an indemnity, applies. Generally stated, subrogation is the right which one man has to stand in the shoes of another man whose loss he has upheld. He stands in the other man's shoes to pursue every remedy and to receive every right which that man can lawfully claim in respect of his loss.

Another right that arises—and it is practically of great importance—in relation to the principle of indemnity is the right which an office has to reinstate instead of paying money. That is connected with indemnity in this way: you can clearly indemnify a man who, let us say, has had his house burnt down, in two ways; you can either pay him what it would cost him to put it right, or you can put it right for him. If you put it right for him, that is known as reinstatement. As to which shall be chosen, that is a matter for the office to determine if there is a reinstatement clause in the policy which gives contractual rights so to elect; otherwise the primary duty under the normal policy is to pay money.

If the office elects to reinstate, the office must reinstate, and if it fails to reinstate it is liable for breach of contract. Once having made its election it must abide by it; it is made for good and all. Therefore, if the office elects to reinstate it must reinstate, and if when it starts to build the house it finds that the bye-laws prevent it from building to the old building line, with the consequence that it cannot in fact reinstate, the office has to put up the best building it can and pay damages for failing completely to reinstate. But, in other circumstances, it is clearly to the advantage of an office to choose to reinstate.

Now I will just show you how that works out. Let us assume that A is the leaseholder of a house and B is the owner of the ground rents of the house. Both, we will say, have insured the house in question for £2,000. The one has insured with the Prudential and the other has insured with—an inferior office. (Laughter.) The house is burnt down. Now, you will appreciate at once that, if the office reinstates, it has at one fell swoop paid both A and B; but, if it does not reinstate, the Prudential has to part with £2,000 and the inferior office has to part with £2,000, and assuming that the property is insured for what it is worth, that means that the office pays twice as much as it would if it reinstated, and thus indemnified both landlord and tenant by putting up precisely the same building as before. In many cases it is directly to the advantage of the insurance offices to claim this right to reinstate.

I do not think I need trouble you with the doctrine of abandonment, which is highly technical. It is really the right that the insured has to regard the property insured as a total loss, and to abandon the property to the insurers and claim the whole amount. The nice point that arises is as to when he can do that. Many a man would be glad to be able to abandon his motor car and claim the price of another. (Laughter.)

The next point that springs out of this doctrine of indemnity is the right of contribution. Contribution only applies when there is double insurance, and double insurance only applies where the same interest (*i.e.*, the same interest of the same person) is insured twice. It has got to be the same interest. Where there are two insurances of the same interest, there you have double insurance.

Now suppose A, in respect of article X, insures with one office that article for £1,000, and with another office for another £1,000, and suppose damage is done in respect of article X within the cover to the extent of £1,000. The assured can obviously (apart from policy conditions) claim his £1,000 either from the one office or the other, or from both; and it may well be that he likes the look of one of the managers or the claim settlers of one office better than the other, and he decides to claim the whole of his loss from one office, which he is perfectly entitled to do in the absence of a contribution clause in the policy. Whereupon that office pays. But that office, having indemnified the assured, has a claim over against the other office for a contribution to the loss, which in the case I have given you would be fifty-fifty—half the loss. But extraordinarily complicated questions, which interest you as accountants, arise when you have covers that do not exactly overlap. That is to say, one will cover A, B and C, and another will cover A, D, E and F, and the loss happens to fall on a bit of A, E and F. It then becomes a question of calculating how much one office was at risk, and how much the other office was at risk in respect of the subject matter of the loss; then, having determined the sum, one office contributes to the other.

The purpose of what is called a contribution clause in a policy is to prevent that circumlocution and to prevent the assured claiming all his loss from one office in the first place. A contribution clause makes it necessary for the assured only to claim from one particular office that sum which the office would have to contribute under the ordinary office contribution settlement.

My next point relates to the various terms which are used in insurance contracts, especially as regards stipulations, conditions and warranties, and I have particularly made this part of the lecture to-night because it is not peculiar to insurance, but applies to all kinds of contracts, and in so far as you are dealing with contracts hereafter you will find they meet you practically every time you have to deal with contracts.

There are three great divisions that embrace the various kinds of terms which you find in contracts: first, a stipulation, or a representation; secondly, a warranty; thirdly, a condition. In ordinary contract law those things are entirely

different. A stipulation, or a representation, is only material in so far as it induces and precedes the contract; it leads up to the contract. If it is a representation of fact material and inducing it entitles the other side to avoid if there is a misrepresentation, but in so far as it is a stipulation in the contract itself it is of no materiality save from that angle. A warranty is a term in the contract that is material, but is not so material as to entitle on its breach the side complaining to tear up the contract and say I am no longer bound. All that the person complaining of the breach of warranty can do is to sue his opponent for damages for breach of warranty. A condition is an essential term in the contract the breach of which entitles the other side to say the contract is now at an end. It is a vital term in a contract, the breach of which entitles the contract to be treated as a nullity. A warranty is a term in a contract that does not entitle you on its breach to avoid the contract, but entitles you to damages for breach of the warranty. That is ordinary contract law.

But when you come to insurance law you have to give a new value to the term warranty, because when you use the term warranty in insurance law you mean condition. Now conditions—and when I speak of warranties now I mean conditions—conditions or warranties can be of many kinds, and it is most important to understand these differences.

A condition, or warranty, can be precedent to the contract, subsequent to the contract, or precedent to the liability. If a condition is precedent to the contract, it means this: that until that condition is fulfilled there is no contract at all. If it is subsequent to the contract it means if that condition is not fulfilled the contract ceases to be. If it is precedent to the liability under the contract, the contract, although the condition is broken, exists, but the liability in question does not.

Now you might say that it is a distinction without a difference. On the contrary, it is a vital difference, and I will illustrate to show you the difference. A enters into a contract of insurance with B, which contains two conditions, one of which is a condition precedent the contract, the other condition precedent the liability. If that first condition is broken the contract is gone, and with the going of the contract goes the arbitration clause. If, on the other hand, that condition is made a condition precedent to liability, the contract has not gone, the arbitration has not gone, but the liability has gone. So the office can insist upon there being an arbitration, and in that arbitration can raise the point that they are under no liability because the assured has broken a condition precedent to liability. It is often of great importance to have a point like that determined in a domestic tribunal, rather than have to fight it through the Courts and make a leading case of it, which everybody will know about.

There is another great distinction to be made between warranties: there are warranties and promissory warranties. When we are using warranties in this sense we are rather speaking of representations that have been turned into warranties by being made warranties by an express term in the contract. If you want to find such an express term in any insurance contract you should look at the bottom of the proposal form and the top of the policy. You find at the bottom of the proposal form that the answers to all the questions have been represented to be true, and declared to be warranties and basic to the contract, and at the beginning of the policy you will find that the proposal form is incorporated in and to be read with the policy. The result of these two things is to make what would normally be representations in the proposal, and therefore not of any effect on the policy unless material, unless inducing and unless statements of fact—you will find that they are turned into warranties which, although immaterial, entirely invalidate the policy unless they are in fact what they are represented to be.

These warranties that I am now speaking about can be either ordinary warranties or promissory warranties. They are ordinary warranties when they represent an existing state of fact—the fact, let us say, that your car is a Morris Oxford, No. CR 7777. That is an existing fact. They are promissory warranties when you warrant the future, and you say "My car will be used for private purposes only." That may be construed as a promissory warranty and is very like a condition subsequent, or it may be construed as a representation descriptive of the risk. If you do not use it like that, an interesting question arises, about which there was a great deal of dispute only a few years ago when a couple of cases laid the question to rest.

Suppose a man insures a taxi against all kinds of risk and says it is used in one shift only, and in point of fact it is used in two shifts, not at the time he makes that representation, but six months after. Is that a promissory warranty? I confess that, were it not for the two decisions above mentioned, I should have advised that it was a promissory warranty. It has, however, been held not to be a promissory warranty, but a representation descriptive of the risk. The difference between the two things is this: if you treat that as a representation of how you intend to use that car, you are covered within the limits you have described in your description, so if that car is smashed up in a week when it is being used on one shift only you can recover, although the week before you were using it on two shifts. But if it is a promissory warranty and the car is smashed up in a week in which it is being used in one shift, you do not recover if you were using it for two shifts the week before. The first moment you are using it on two shifts your promissory warranty comes in and your contract is gone. That is the difference between regarding a representation of that nature as a promissory warranty, or as a representation descriptive of the risk.

I just want to warn you, because you will in future be advising all kinds of people with respect to all kinds of insurances, because insurance seems to percolate into every kind of business and profession, from insurance against loss of profit to insurance against triplets—(laughter)—they even now insure against the probability of Judges' decisions being upset on appeal, and in a certain case of a Judge long since dead the insurance rate ran as high as 85 per cent. (Laughter.) As regards the proposal, I ask you always carefully to peruse the declaration form at the foot. If I wanted to put my finger on the most important common form words to be found in insurance contracts, I would put my finger on the declaration form at the foot of a proposal; and I want you to remember that, if ever you are proposing for a policy and generally proposing in the presence of the agent of the office, that that agent is, as a rule, your agent for the purpose of filling in the proposal form, and for that purpose is not the agent of the office. Many people seem to labour under the delusion that because they have told the agent this, that, or the other, that is good enough.

Remember—because it has lost case after case for assu.eds—that when you sign that proposal you make yourself responsible for every answer in it. It is of no avail to say, "This gentleman is not my agent; he is the agent of the office." He is not the agent of the office for the purpose of filling in that proposal; he is your agent, and you cover him when you sign. He is, however, the agent of the office to this extent: that it is now the accepted view (it started with *Bawden's* case) that knowledge that comes to the agent may be regarded as knowledge that comes to the principal, and so, although the proposal may contain misstatements still that

may not entitle the office to avoid if the true facts were known to the agent, for in such a case the true facts may be deemed to be known to the office.

The reading of an insurance policy is comparatively simple. It is a comparatively simple document, and is becoming simpler owing to the wise policy now ruling of making policies as easy and free from conditions as possible. Of course there is a vast difference between the type of policy you get for a life risk and a motor car risk. In the second case there are very stringent conditions and exceptions. Those exceptions have to be very carefully perused when you are advising clients that they are sufficiently covered, because the exceptions are carefully drafted and are drafted to cut down the cover to what is reasonable in view of the premium. You can get as wide a cover as you like, but you pay a higher premium.

The first thing to do is to see whether you have included everything, and that what you desire to cover is not excluded by the exception clause; and, finally, one has to peruse carefully the conditions which are at the end of the policy, first of all to see what duties are to be performed, and secondly, whether further exceptions are included as a consequence of those conditions, as is sometimes the case.

Now, ladies and gentlemen, I must stop, but I cannot stop a lecture on insurance without impressing upon you the enormous importance insurance has to-day in our commercial life. Insurance premiums form one of the largest invisible imports of this country, and the integrity of British offices is so high that, I suppose, their name stands easily first amongst all the great commercial nations of the world. I was much impressed, on a recent visit I paid to Latvia, by the fact that, so high does English insurance stand in Latvia, that the Government has passed a law which makes it illegal for a Latvian subject to insure in a British office direct, because otherwise nobody would insure in a Latvian office. (Laughter.) They get out of the difficulty by insuring in Latvian offices, which reinsure to the extent of 95 per cent. of the cover with British offices. That is a good example to show you that, although there have been in the Courts animadversions upon insurance practice, in truth English insurance practice is marked by the highest possible integrity.

Discussion.

The CHAIRMAN: Although I have been connected with insurance for over 40 years I must confess that several new points have been presented to me this evening, and I am quite sure you also will have learned a good deal from the lecture. It has been extraordinarily interesting the way in which Mr. Stone has first of all outlined the general contract law and then brought it into line with insurance. We have learned a great deal on the law of contract, with its particular application to the law of insurance. Mr. Stone was referring to gambling contracts, and I should like to ask him whether Lloyds still pay on what are called P.P.I. policies—policy proof of interest. It used to be only necessary for a person to produce a marine insurance policy to establish the fact that he had an insurable interest in the ship that went down. I remember this quite well, because when I first started coaching pupils, some twenty years ago, my first pupils came from Cardiff, and they told me they had found some ship that was A3 at Lloyds and was likely to be wrecked, and that they had taken out a policy for £200 on that ship. About three or four days later they arrived in town for their special fortnight's coaching, and they noticed that the ship in question had gone down; they were therefore able to claim this £200 merely by production of the policy. This so bucked them up that they passed their examination. (Laughter.) The second point was in regard to non-disclosure. We have in insurance matters sometimes rather too much disclosure. We had a woman come in a short time ago who said to the clerk at the counter: "Kindly send round an agent at once, as I want to insure my little boy." The clerk replied: "Yes, we will send in the course of a day or two." But she remarked "You must send him at once because the child is dying." (Laughter.) The third point I want to mention is this. The Lecturer said that two exceptions to a contract of indemnity were life and accident. Am I right in thinking that sinking fund is also an exception? I should like to thank the Lecturer very much for his advertisement of the Prudential. (Laughter.)

Mr. STONE: The last question is a very difficult one; I have never considered it. But I can lay down a principle which will enable you to answer it for yourself. It is a contract of indemnity if the risk that is covered is capable of being assessed on a money value, but not otherwise. With regard to the non-disclosure point, I will not treat that excellent story seriously. As regards the P.P.I., they still go on with it, but it has been illegal since 1746.

Mr. C. E. WAKELING, Incorporated Accountant: I should like to ask the Lecturer one or two questions with regard to indemnity being the basis of insurance of certain risks. He cited, I think, the option of an insurance company to re-instate as against paying the full sum insured. I have in mind the case of a motor car where a tyre is, say, 50 per cent. worn, and, owing to the balance of the car, the tyre is worn at a certain angle. If the car is concerned in an accident and the tyre damaged, can the owner claim a complete new tyre, or have the insurance company the right to say "It is 50 per cent. worn. A new tyre would cost £5; we will give you £2 10s., and that is all you are entitled to?" There is a further point which has often troubled me, and that is with regard to a policy of fire insurance taken out on a house—say, a comprehensive policy on a house with contents. The insurance goes on for many years and no claim is made. Then the insured finds that he has mislaid the policy and asks for a copy. The company instead issue a new policy, and the insured eventually discovers that the terms are not exactly the same as the original; a further condition being added "excluding damages thereto." In these circumstances is the insured entitled to rely upon his original policy of insurance if same can be found, which, I presume, would include the original proposal form?

Mr. STONE: With regard to the first point, in practice I think my friend will agree that it is a matter for a claim settler; that is to say, it would not arise as a matter of law. But if it were tested as a matter of law, then in my view the position is as follows: The insured is entitled only to a reinstatement of his motor car in the condition it was at the time of the loss, and if that condition involved a half worn out tyre, all he would be actually entitled to would be a motor car with a half worn out tyre. But in practice the point does not arise, because insurance offices settle these things on a broad basis, and, if only to save themselves the trouble, would give him an ordinary car with new tyres on it, I should imagine. With regard to the second question, on the facts as stated I think it would be held that the contract is controlled by the terms of the original policy and when the assured discovers the difference he could insist upon a copy which was a correct copy of the original contract. The insured could thus in effect insist on his original insurance which would probably incorporate his original proposal form.

Mr. J. AUERBACH: In the case of marine insurance, I understand that if there is no risk the premiums are returnable. If there has been a misrepresentation in the proposal and the person pays premiums for several years, and then there is a claim, and the claim is put aside by the insurance company on the ground of misrepresentation, are the premiums returnable?

Mr. STONE: If the misrepresentation is an innocent one, the assured can claim the return of premiums if the insurance office decides to void the policy on the ground of misrepresentation. If it is fraudulent, he cannot get a return of the premiums. Also, if, in consequence of lack of insurable interest, the policy is torn up, the assured cannot obtain return of premiums. In the third case it is because to do so he would have to invite the Court to take notice of an illegal transaction.

Mr. S. E. STRAKER: I am wondering what the effect of what the Lecturer told us with regard to the recent decisions affecting marine underwriting slips will be on the large amount of business done at Lloyds and elsewhere solely on the basis of those slips. Under the Stamp Act a policy has to be issued within one month, but a large amount of business

is done, say, to-day for a boat leaving to-morrow morning, and the only evidence that exists of the insurance is contained on the slip. If on the way down the Thames the boat sinks, presumably no honest underwriter would seriously contest his liability solely because no policy had been issued. The practice, I believe, is for a policy to be issued before the claim is actually settled, and its terms should coincide with those appearing on the slip. Apparently the risk does not commence until payment of the premium, and although the insurance is there as from the date of the initialling of the slip it cannot be enforced until a stamped policy is issued. On all Lloyds policies the receipt of the premium is acknowledged whether it has been paid or not, but if in the circumstances I have mentioned an underwriter refuses to issue a policy, it would appear to be of no avail for the other party to stamp the slip—if that could be done—if, in fact, the premium had not been paid prior to the loss. If the premium had been paid, what right would the other party have against the underwriter for failing to issue a policy in agreement with the terms of the accepted slip, apart from the penalty to which the underwriter is liable under the Stamp Act, &c. In view of what has happened within the last six weeks or so, I should be very grateful if Mr. Stone could give us the benefit of his views. With regard to the question of the ground landlord and the tenant, or leaseholder, of a house who both insure, if either one of them insured in two offices those two offices would halve the total risk. Would not the same interest which exists as between the leaseholder and the ground landlord imply a similar sort of condition—apart from the reinstatement clause, I mean?

Mr. Stone: To take the last point first, I do not quite agree that where there are two entirely distinct contracts of that nature the two offices do share the risk. They both have to pay the full amount. You can quite easily imagine a case where both of those parties have an insurable interest to the whole of the value of the property—in fact it happens constantly—and they are not insuring the same interest. There is not a technical double insurance. There are two insurances of the same thing, and both of those people are entitled to insure the same thing. Of course, normally, under the average commonplace lease, one or the other covenants to insure for the joint account of both, but cases have arisen in the past, in which each insures in his own interest, the one as owner and the other as tenant, the whole value of the building, and each can claim the whole value from the office. The advantage of reinstatement is that both offices give the assured the whole value by putting up the building again. If any party interested in the building requests the office to reinstate, the office can reinstate apart from the contract altogether. With regard to the slip, the position has, as you say, been rendered rather surprising during the last few weeks owing to the decisions on stamps. Let me make it quite clear. The underwriters, or the offices, do not raise any point with regard to an unstamped slip; they honour their slips as though they were formal insurances in every case. The trouble is, if you find yourself in Court relying upon an unstamped slip, the Court can take the objection that that slip cannot be given in evidence, and, if that is so, it is not much good going on. In two cases I have in mind the thing came to a sudden collapse in half an hour, owing to the fact that the Court refused to look at an unstamped document.

Mr. O. D. Ezra: There is just one point not very clear to me, and that is where a person has bought a car on the hire purchase system. Of course, the car is insured by the hirer until the last instalment falls due for payment, and subsequently, several instalments being in arrear, the hiree, to safeguard himself, insures the car. Could a claim be set up against the insurance company if the car was smashed, and could the hirer claim the amount of compensation?

Mr. Stone: The only objection to the hirer of a motor car under a hire purchase agreement, which leaves the ownership in the hiree until payment of the last instalment—the only objection is presumably based on the need for an insurable interest. But in *Williams* v. *The Baltic Insurance* it was decided that a motor car falls within the term "goods," and goods and merchandises are excluded from those things which you have to have an insurable interest in. You can insure a motor car although you have no insurable interest in it, so long as the insurance is not a gaming transaction. If the hirer has sufficient interest to make his insurance of the car not a gaming transaction under the Gaming Act of 1845, although he clearly may not have an insurable interest within the Gambling Act of 1774, the hirer can insure the car and the person from whom it is hired can insure the car. If they do, and there is a smash, both can recover from their respective offices, and when they have recovered those offices do not contribute as between themselves.

Mr. S. T. Morris, Incorporated Accountant: In the case of a loss under a burglary policy, is the assured obliged to take any steps to trace the burglar, and, if so, can he also claim for the expense of endeavouring to recover the goods in addition to his actual loss?

Mr. Stone: It is rather a difficult question. In point of practice it is always governed by the conditions of the policy. The assured is required to give immediate notice of the loss to the office, and the office thereupon reserves the right to take all necessary steps for the recovery of the property. If there was no such condition as that, it would be the duty of the assured to do everything he reasonably could to save secure the person who was insuring him, and, if he did that, his expenses could be charged.

On the motion of Mr. Wakeling, seconded by Mr. Straker, a vote of thanks to the Lecturer was unanimously passed, and a similar compliment paid to the Chairman.

District Society of Incorporated Accountants.

BELFAST.

Annual Report.

Your Committee have pleasure in presenting the report on the work of the Society for the year ended March 31st, 1928.

Membership.

The total number of members is 123, consisting of 13 Fellows, 38 Associates and 72 student members, as compared with a total membership of 91 last year.

Examinations.

The examinations of the Parent body were held in May and November. Thirty candidates entered for the May examination and eighteen in November. Nineteen candidates being successful in May and nine in November. The following candidates were successful in passing the Final examination:—Mr. William Brown, Mr. William Dunn, Mr. George L. Holmes, Mr. James Sinclair and Mr. John Woods.

Students' Society.

A Students' Society has been formed during the year, and has now a membership of 72. The Committee are glad to observe the enthusiastic manner in which the work of this Society is being carried on by the President (Mr. J. S. White), Vice-President (Mr. Robert Bell) and Honorary Secretary (Mr. H. McAlery), assisted by a very capable committee of student members. The last three of the following lectures were organised by the Students' Society:—

1927.

Nov. 25th. / Dec. 16th. — Discussion on "Model Answers to November Examination Questions," prepared by Mr. Robert Bell, F.S.A.A., and Mr. Herbert McMillan, A.S.A.A.

1928.

Jan. 26th. — Mock Company Meeting.

Feb. 22nd. — "Cost Accounts," by Mr. D. T. Boyd, B.Com.Sc., A.S.A.A.

Mar. 29th. — "Income Tax Law and Practice," by Mr. W. H. Palmer.

Golf Competition.

The annual golf competition for the "Booth" Cup was held at Scrabo on May 30th, 1927. The winner of the cup and replica (presented by Mr. Norman Booth) was Mr. Herbert McMillan, Mr. H. F. Bell winning the running-up prize

presented by the Vice-President (Mr. F. Allen). In the afternoon a consolation stroke was held, Mr. H. Andison winning the prize presented by Mr. James Boyd.

PRESIDENT'S VISIT.

On June 17th, 1927, the President of the Society (Mr. Thomas Keens), accompanied by Mrs. Keens and Mr. Alexander, paid a visit to Belfast. The President addressed the members on several matters of considerable interest to the Society, and at the luncheon an opportunity was taken of presenting Mrs. Keens with a hand-woven table cloth as a souvenir of her first visit to Ireland.

ANNUAL DINNER.

The annual dinner was held in the Grand Central Hotel on December 2nd, 1927. A large number of members and guests were present. The guests included The Right Hon. The Viscount Craigavon (Prime Minister of Northern Ireland), The Right Hon. Sir R. Dawson Bates, M.P. (Minister of Home Affairs, Northern Ireland), Mr. G. B. Hanna, M.P. (Parliamentary Secretary to the Ministry of Home Affairs), Mr. Thomas Keens (President, Society of Incorporated Accountants and Auditors).

COMMITTEE.

Your Committee have been asked to advise on the proposed codification of income tax law, and a sub-committee, consisting of Mr. G. H. McCullough, Mr. F. Allen and Mr. James Baird, have been appointed to act with representatives of the Incorporated Law Society and the Belfast Society of Chartered Accountants in preparing a report on this matter.

Eleven Committee meetings were held during the year. In accordance with the rules all members retire, but are eligible for re-election.

INCORPORATED ACCOUNTANTS' GOLFING SOCIETY.

The Spring Meeting of the Incorporated Accountants' Golfing Society will be held on the course of the Purley Downs Golf Club on Wednesday, May 2nd, at 10 a.m. The Society's Challenge Cup will be competed for, and the winner will receive a Prize presented by Mr. Alexander A. Garrett. A Second Prize will be given by the Society. The Competition will consist of stroke play over 18 holes.

Members' annual subscriptions should be sent to the Joint Honorary Secretaries at 50, Gresham Street, London, E.C.2.

His Excellency the Governor of the Straits Settlement has appointed Mr. J. S. M. Rennie, Incorporated Accountant, a Justice of the Peace for the Settlement of Singapore.

Scottish Notes.

(FROM OUR CORRESPONDENT.)

"Britain's Financial Plight."

It takes some courage as well as assiduous inquiry to discuss competently in critical terms the financial position of the country. Mr. J. W. Kempster, Managing Director of Messrs. Harland & Wolff, Limited, Greenock, fulfils both conditions in his recent book "Britain's Financial Plight" (London: General Press, 3, Arundel Street; 7s. 6d.). In clear and popular language, easily grasped by the average reader, he compares the present day scale of expenditure, taxation, local rating, and savings with pre-war figures. In dealing with price levels he converts present day figures into the pre-war equivalents, thus offering an easy method of comparison. In dealing with the expenditure of local authorities he quotes from an address by Mr. Thomas Keens, President of the Society of Incorporated Accountants and Auditors, at the Incorporated Accountants' Conference in Manchester last September, where Mr. Keens stated that in an English County Council of which he is a member, whereas a few years ago the services controlled by the council were 21½ per cent. and those imposed on the council by Act of Parliament 78½ per cent., in 1926-27, with an expenditure of approximately £572,000, no less than £517,000, or 90 per cent., was practically controlled by the Government. Mr. Kempster is not a pessimist, as the title of his book would seem to suggest. He is careful to point out that there is a middle course, and that "the unbiassed critic of the future will marvel how well we have withstood the terrific strain of the past years materially and financially. So much so that, with our innate vitality so strikingly evidenced by our unsurpassed staying power, our recovery is only a question of time. And whether that time is to be long or short to a large extent rests with ourselves." Mr. Kempster quotes largely from Dr. Bowley, Sir Josiah Stamp, and other financial authorities, and his book is well worth perusal by all interested in national and local finance.

Conversion of Share Capital.

On March 27th last the First Division of the Court of Session disposed of a petition by the Scottish National Trust Company, Limited, Glasgow, for authority to summon meetings, and to sanction a scheme of arrangement with the preference shareholders. The share capital of the company, which was incorporated in 1924, is £500,000, divided into £10 shares, which may, as and when from time to time fully paid up, be converted by resolution of the directors into preference and ordinary stock in the proportions of 60 per cent. and 40 per cent. respectively. The preference shares are entitled to a fixed cumulative preferential dividend at the rate of 5 per cent. per annum, and rank as to dividend and capital in priority to the ordinary stock, and "all other stock and shares in the capital for the time being of the company, but shall not confer any further right to participate in the profits or assets of the company, and the said preference stock shall be subject to the other provisions with regard to the same contained in the Articles of Association." The 50,000 shares were converted into preference and ordinary stock in December, 1924. The directors contemplate increasing the capital at an early date, and issuing shares to be converted, and fully paid up, into preference and ordinary stock in the same proportions. Doubts had arisen in view of the terms of the clause quoted, whether it was competent for the company to create preference shares which would rank *pari passu* with the preference stock already in existence. The Division granted the prayer of the petition.

A Recalcitra t Trustee.

The First Division of the Court of Session recently disposed of a petition of a somewhat unusual nature by the trustee on the sequestrated estate of J. H. L. Pennell, an Edinburgh solicitor, now in Peterhead prison. The bankrupt had personally acquired a bond and disposition in security for £50 from a trust on which he was sole trustee. This was not disclosed to his trustee in bankruptcy. In order to put the matter on a proper basis he was requested to execute an assignation in favour of the trustee on his bankrupt estate. This, however, he refused to do, notwithstanding he had been ordered to do so by an order by the Sheriff of the Lothians. In these circumstances the petitioner presented this application to the Court to authorise the Clerk of Court to sign the assignation on behalf of Pennell under authority of the Court. The parties interested had agreed to accept such a discharge as valid and sufficient for their purpose. The Court granted the prayer of the petition. The Lord President said the petition appeared to be covered by the precedent provided in *Wallace's curator bonis* v. *Wallace* in 1924. Any remedy that could be taken, in face of Mr. Pennell's refusal to sign the assignation, by the ordinary forms of process would be more expensive than the total amount of his interest in the bond warranted, and the parties were willing to accept a title

signed by the Clerk of Court. Nothing that the Court did now was to be interpreted as warranting the notion that it would be proper for the Court to resort to the expedient asked in the petition, but, as the trusteeship of Mr. Pennell in relation to the £50 interest in the bond was entirely on the surface and void of any substance, there did not seem any reason why, if the conditions laid down in *Wallace* were complied with, the same authority should not be given.

Notes on Legal Cases.

[The abbreviations at the end of each of the cases refer to the following law reports, where full reports of the case may be found. The Law Reports and other reports are cited with the year and the Division, *e.g.* (1925) 2 K.B.:—

T.L.R., *Times Law Reports*; *The Times*, *The Times* Newspaper; L.J., *Law Journal*; L.J.N., *Law Journal* Newspaper; L.T., *Law Times*; L.T.N., *Law Times* Newspaper; S.J., *Solicitors' Journal*; W.N., *Weekly Notes*; S.C., *Sessions Cases* (*Scotland*); S.L.T., *Scottish Law Times*; I.L.T., *Irish Law Times*; J.P., *Justice of the Peace* (*England*); L.G.R., *Knight's Local Government Reports*; B.& C.R., *Bankruptcy and Company Cases*.

The other abbreviations used in modern reports are H.L., House of Lords; A.C., Appeal Court (House of Lords and Privy Council); C.A., Court of Appeal; Ch., Chancery Division; K.B., King's Bench Division; P., Probate, Divorce and Admiralty Division; C.S., Court of Session (Scotland); J., Mr. Justice (King's Bench or Chancery); L.J., Lord Justice; L.C., Lord Chancellor; M.R., Master of the Rolls; N.I., Northern Ireland; P., President of Probate, Divorce and Admiralty.]

REVENUE.

Mills v. Jones.

Income Tax on Award by Royal Commission to Inventors.

Rowlatt (J.) held that income tax was payable on certain sums awarded by the Royal Commission on Awards to Inventors, it appearing that the sums in question were not a capital payment made for the Crown's acquisition of a patented invention but were sums paid for the user thereof.

(K.B.; (1928) 44 T.L.R., 351.)

Inland Revenue Commissioners v. Lysaght.

Meaning of "Ordinarily Resident."

The House of Lords allowed an appeal from a decision of the Court of Appeal (reported in *Incorporated Accountants' Journal*, May, 1927, p. 296) and held that a director of an English company who resides in Ireland and comes to England only occasionally for the purposes of the business of the company, may be "resident" in England for income tax purposes.

(H.L.; (1928) L.J.N., 230.)

Levene v. Inland Revenue Commissioners.

Residence Abroad and Visits to England.

The House of Lords dismissed an appeal from a decision of the Court of Appeal (reported in *Incorporated Accountants' Journal*, May, 1927, p. 296) and held that a British subject mainly living in hotels abroad, but coming regularly to England for many weeks in each summer, may be resident in England for income tax purposes.

(H.L.; (1928) L.J.N., 230.)

Attorney-General v. Luncheon and Sports Club.

Betting Duty.

The defendants are the proprietors of a club in which were installed a totalisator and a pari-mutuel to enable members to stake money on horse races. The club acted merely as distributing agent, the rules empowering it to deduct a percentage of the gross amount staked for expenses, the balance being divided among the members who had backed winning horses. Any fractions remaining after the winnings had been apportioned were retained by the club to provide against possible defaults in members' payments. An information by the Attorney-General alleged that the defendants were liable to pay betting duty in respect of the wagers so made.

Rowlatt (J.) held that the club was the principal in each transaction, and was only a distributing agent in the sense that the various transactions balanced. It was clear that the winners looked to the club for payment and not to the losers direct. The fact that the fractions remaining in the hands of the club after payments were enough to recoup defaults did not affect the matter. The transactions were bets, and the Crown was therefore entitled to the relief claimed.

(K.B.; (1928) W.N., 81.)

Attorney-General v. Motors, Limited.

Income Tax and Set-off.

Rowlatt (J.) held that where sums were due to the Crown for income tax and corporation profits tax by the respondent company, there was no right of set-off in respect of certain sums alleged to be due to it under an agreement with the Commissioners of Inland Revenue.

(K.B.; (1928) L.T.N., 259.)

Naval Colliery Company, Limited, v. Commissioners of Inland Revenue.

Deductible Expenses.

The House of Lords dismissed an appeal from a decision of the Court of Appeal. Owing to stoppage brought about by a strike mines suffered damage during the accounting period, April 1st to June 30th, 1921, and a sum of £37,808 was spent in reconditioning the mines, which was expended after July 2nd, 1921. The question was whether that sum was a proper deduction to be made in computing the profits of the accounting period ending June 30th, 1921.

It was held that as the appellants' business of coal mining was necessarily suspended during the accounting period, the cost of reconditioning was not deductible.

(H.L.; (1928) L.T.N., 187.)

H. J. Hamilton & Co., Limited, v. Commissioners of Inland Revenue.

Business as Commercial Travellers.

The House of Lords allowed an appeal from a decision of the Court of Appeal. The sole business of the appellant company was that of agents to obtain orders for British and Continental manufacturers for which the directors travelled as commercial travellers. The company contended that the business of the company was that of commercial travellers and claimed to be exempt from excess profits duty by sect. 39 of the Finance (No. 2) Act, 1915.

It was held that the appellants were entitled to the exemption contained in sect. 39 for they were a "person" and the business was that of commercial travelling.

(H.L.; (1928) L.T.N., 232.)

R. v. Commissioners of Customs and Excise.

Recovery of Portion of Increased Duty on Licences.

Sect. 46 of the Finance (1909-10) Act, 1910, which confers on a lessee of "tied" licensed premises the right to recover from the persons from whom he "is bound" to obtain his liquor a proportion of the increased licence duty imposed by sect. 43 of the Act does not apply to tenancies entered into after the passing of the Act.

(C.A.; (1928) 1 K.B., 523.)